CITY OF
HAYWARD
HEART OF THE BAY

_____

DATE: October 12, 2010

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Introduction of an Ordinance Adding Article 11 to the Hayward Municipal Code to Prohibit Use of Polystyrene Foam Disposable Food Service Ware and Requiring Recyclable or Compostable Food Service Ware

RECOMMENDATION

That Council adopts the attached Resolution adopting the Negative Declaration; and conducts a hearing and considers introduction of an Ordinance adding Article 11 to the Hayward Municipal Code prohibiting the use of polystyrene foam disposable food service ware and requiring recyclable or compostable food service ware, effective July 1, 2011.

SUMMARY

At its July 7, 2010 meeting, the Council Sustainability Committee reviewed a report and other necessary documents, including a draft ordinance prohibiting the use of polystyrene foam disposable food service ware and requiring the use of recyclable or compostable food service ware. The primary goal of the proposed ordinance is to restrict retail food vendor use of polystyrene foam food service containers and to create a shift to multiple-use containers, where possible. Where multiple-use containers are not viable, the preferred alternative is to plastic or paper containers that can be recycled or composted.

The proposed ordinance is consistent with Action 6.4 of the City of Hayward's adopted Climate Action Plan to evaluate banning polystyrene from landfills. The Draft Ordinance (Attachment II) and Negative Declaration (Attachment III) are attached to this report. An Initial Study has been prepared and is available on the City's website at this link[1]. A copy is also on file for review in the City Clerk's Office. A copy of the July 7, 2010 Council Sustainability Committee Report is also attached (Attachment IV), as well as a copy of the minutes from the July 7 Committee meeting (Attachment V). The information included in several sections of the July 7, 2010 Committee Report required no change and has not been restated in this report.

[1] http://user.govoutreach.com/hayward/faq.php?cid=11037

DISCUSSION

Recommended Provisions - Staff continues to recommend application of the ordinance to any retail establishment located within the City that provides prepared food or beverages, including, but not limited to, restaurants, supermarkets, delicatessens, sales outlets, shops, outdoor vendors, cafeterias, catering trucks, caterers, special events promoters, farmers markets, and retail food vendors. The ordinance would apply to the City of Hayward and its facilities, as well as individuals or groups who require a permit to reserve or rent a City Facility or a permit or contract to use a plaza, sidewalk, or roadway. The ordinance would not apply during emergency response actions.

If the ordinance is adopted by the City Council, staff from the Hayward Area Recreation and Park District (HARD) has confirmed that the agency will implement the same provisions District-wide with its contracted vendors, golf courses, senior center, and concessions at Kennedy Park. However, HARD staff will not attempt to control compliance by park patrons. As with most other City ordinances, the Hayward Unified School District (HUSD) will not be subject to the ordinance; although recent staff contact with HUSD indicated there may be some interest in this issue. In addition, while CSUEB and Chabot College will also not be subject to the ordinance, staff has recently initiated contact to determine possible voluntary participation but, as of this report, had not been able to get an answer.

The proposed ordinance requires the use of compostable or recyclable take-out food service ware, rather than polystyrene foam containers, for any food or beverage prepared for consumption within the City using any cooking, packaging, or preparation techniques by the food vendor. The ordinance applies to packaging that is controlled by or at the discretion of the Hayward business owner. It will not apply to foods that are packaged outside the City of Hayward, and later sold within the City of Hayward. Thus, the ordinance does not apply to uncooked meat, fish, poultry, or eggs, unless provided for consumption without further preparation, such as sushi. Further, meat that is cut and prepared for sale, but not consumed on the premises, would not be subject to the ordinance.

This provision is consistent with the ordinances adopted by municipalities in Alameda, Contra Costa, San Francisco, Santa Clara, and San Mateo Counties. The definition of food service ware includes plates, cups, bowls, trays, and hinged and lidded containers. Single-use straws, coffee stirs, utensils, or hot-cup lids are items often associated with take-out food service, but are not restricted by the ordinance since these items are not typically made of polystyrene foam. Staff recommends that the definition of food service ware, as described above, be retained without additions to allow businesses adequate time to convert to sustainable container types. An ordinance that would include a broader range of food service ware, such as utensils and straws, may be recommended at a later time.

Alternative products to polystyrene foam are readily available from local retail vendors such as Costco and Smart & Final. A list of manufacturers and distributors of compostable food service ware is also available at stopwaste.org . Staff has confirmed that compostable and recyclable food service ware is used by businesses in Emeryville, Oakland, Millbrae, Palo Alto, and Richmond, all of whom have adopted similar packaging ordinances. These recyclable or compostable alternative products include paper-based packaging, compostable plant-based packaging, recyclable plastic

packaging identified as recyclable by the City in its municipal recycling program, and aluminum packaging. For purposes of this proposed ordinance, compostable means that all the materials in the product or package will break down into, or otherwise become part of, usable compost, such as a soil amendment. Rigid plastic containers are also currently available in many shapes, sizes, and styles for use instead of polystyrene foam. Aluminum packaging is also an acceptable alternative to polystyrene packaging, as aluminum has well-established recycling markets. Staff indicated in the July 7 Council Sustainability Committee Report that cost-competitive rates for alternative products that are recyclable may occur over time as market demand increases similar to the current rates for 100% post-consumer recycled copy paper versus paper with little or no recycled content. There is anecdotal evidence on the web and in local media that this is already changing.

ENVIRONMENTAL REVIEW

Staff has conducted an Initial Study and concluded that implementation of the proposed Hayward Municipal Code amendment to ban use of polystyrene foam food service ware by food vendors within the City of Hayward will not have a significant adverse impact on the physical environment. In fact, it will be have a positive impact. A Negative Declaration has been prepared and filed with the Alameda County Clerk's Office. On September 15, 2010, a Notice of Intent to Adopt Negative Declaration was published in *The Daily Review*. Copies of the Negative Declaration and Initial Study Checklist were posted twenty days, from September 15 through October 4, 2010, for public review in accordance with the California Environmental Quality Act. No comments were received on the environmental documents.

ECONOMIC IMPACT

As was indicated in the July 7 Council Sustainability Report, the estimated per-unit costs to buy recyclable and biodegradable containers ranged from two to four times more than polystyrene foam food service ware, depending on the container type, weight, and durability, according to three vendors who sell recyclable and biodegradable containers to cities, universities, and private sector companies. To assess the actual cost differential between polystyrene foam containers compared to sustainable paper-based products, staff visited a wholesale business (Costco Business Center) and recorded the cost of the two types of containers. On average, a hinged polystyrene container cost about $0.10 each, while the equivalent paper container cost about twice as much. Thus, the cost impact per food product purchased using this particular container could be $0.10 to $0.15 more.

If, for a low-price restaurant, the cost per food item is assumed to be about $4.00 to $5.00, the cost of the polystyrene foam container would be close to 2% of the total cost. If this restaurant switched to a more sustainable product, the container cost would be about $0.20 to $0.25, or about 4% - 5% of the cost. Therefore, the additional cost of switching to a sustainable container would be 2% - 3% of the revenue of the portion of food that is sold using polystyrene foam containers. The largest impact would be incurred by restaurants using polystyrene foam for both takeout and inside dining. For restaurants that do not use polystyrene foam plates for in-store dining, or where takeout is not a major part of the business, the impact would be much less. In terms of real dollars, based on the

survey of the restaurants and other information gathered, staff estimated the additional cost to be between $150 - $250 per month for most small- to medium-size retail food establishments.

Assuming that this cost cannot be passed on to customers and, if absorbed by the food vendor, this amount will need to come from each business' earnings. Actual costs for an alternative product would be largely dependent on the amount and types of disposable food service ware used. Some businesses have identified cost-neutral alternatives to replace polystyrene foam food service ware, according to staff from other cities. As demand for alternative products increases, the development of new products at cost-competitive rates could occur.

Enforcement of this ordinance would be on a complaint basis and reported to the Public Works Department for response by Solid Waste Program staff. The City Manager or designee would be authorized to enforce the ordinance and issue fines for uncorrected violations. Food vendors would be exempt for a period of time on a case-by-case basis for undue hardship after the effective date of the ordinance. Undue hardship would include, for example, conditions unique to the food vendor not typically applicable to other vendors in similar circumstances. The City Manager or designee would have the authority to determine if a violation occurred and issue a written warning notice to the food vendor.

Staff would work with food vendors to provide the necessary education to comply with the ordinance. While business outreach would be the primary tool to encourage the switch to more sustainable products, fines would be used as a last resort for vendors that continue to violate the ordinance. Violation of the proposed ordinance would require a written warning to the food service vendor. Any violation that occurs after a written warning has been issued would be subject to civil and administrative enforcement and may include a fine established by resolution of the City Council. Citations issued for a violation would include the vendor's right to an administrative hearing to challenge the validity of the citation and a time for requesting that hearing in accordance with the City's Municipal Code.

Staff has reviewed documents provided by Save the Bay indicating the difference in the costs of polystyrene foam food service ware versus compostable food service ware and has concluded that the estimated per-unit costs are within the range described above, Staff confirmed that the cities of Richmond and Millbrae prepared analyses similar to that prepared by staff indicating estimated differences in the purchase price for polystyrene foam food service ware compared to compostable alternatives and reported the same conclusions as those described above. Staff from the cities of Fremont, Oakland, Palo Alto and South San Francisco did not prepare any cost analyses. The cities' ordinances listed above were selected because of their varying scope and proximity to the City of Hayward.

The ordinances adopted by Oakland and Millbrae list a larger range of single-use products subject to the ordinance, including coffee stirs, single-use straws and utensils, as well as the other products already identified. Richmond's ordinance includes most of the products listed, excluding lids and straws. By contrast, the ordinances adopted by Fremont, Palo Alto and South San Francisco do not include single-use straws, coffee stirs, utensils or hot-cup lids, so are similar to the ordinance recommended by City staff.

FISCAL IMPACT

The ordinance would be implemented by Solid Waste Program staff using available Recycling Fund monies. No impact to the General Fund is anticipated.

PUBLIC CONTACT

July 7, 2010, Council Sustainability Committee (CSC) – Representatives from Clean Water Action and Save the Bay spoke in support of the proposed ordinance, each citing the substantial costs borne by municipalities for street sweeping services and the adverse impacts on marine life and public health. Both representatives also asked that the Committee consider expanding the scope of the ban on all polystyrene food service ware, including straws, utensils, coffee stirs, and hot cup lids, as well as clear polystyrene products, rather than only polystyrene foam containers.

Opponents to the proposed ordinance included two restaurant owners. One urged that the increase in costs for converting to biodegradable food containers be delayed until the current economy improves to a time when small- to medium-size restaurants could better afford such increases in costs. Another owner suggested that all retail sales of polystyrene foam containers be banned to ensure equitable application of the ordinance. City staff responded by indicating that businesses like Costco's food counter would be subject to the same provisions of the ordinance as all establishments. The ordinance will not ban retail sales of polystyrene foam food service ware, because it is not something that can be effective locally and is the likely reason none of the other ordinances adopted by municipalities in Alameda, Contra Costa, Santa Clara and San Mateo Counties included such a ban. A representative from the California Restaurant Association also spoke in opposition to the ban, citing the same reasons as those identified by the two restaurant owners.

Correspondence from groups opposing and supporting the ordinance is included as Attachments VI-VIII. (A complete copy of the three reports cited below and in the Attachments is available on the City's web site[2] and in the City Clerk's Office.) The letter from the American Chemistry Council (ACC) opposes the ordinance and cites the results of a 2008 litter audit along numerous streets conducted for the City of San Francisco (City of San Francisco Streets Litter Re-Audit, 2008[3].)

ACC's letter takes the position that the proposed ordinance would shift the type of litter on streets from polystyrene foam packaging to paper so that the ordinance should instead ban all takeout food packaging, regardless of material type. San Francisco staff responsible for the report confirmed that the report's most important observations were that total litter measured during the audit decreased 17% from 2007 to 2008, the amount of polystyrene litter decreased 36% over the same period, and staff considers its ban on polystyrene food service ware an effective tool to reduce total litter generated.

ACC's letter also cited a January 2008 report prepared for the Seattle Public Utilities as showing that a ban on polystyrene food service ware would increase greenhouse gas emissions, non-

[2] **http://user.govoutreach.com/hayward/faq.php?cid=11037**
[3] **http://www.hayward-ca.gov/departments/publicworks/documents/2010/SF_litter_audit.pdf)**

renewable energy, and waste generated ("Alternatives to Disposable Shopping Bags and Food Service Items, Volume 1", Prepared for Seattle Public Utilities, January 2008[4].) It is important to note that the referenced report applied to a limited ban of all polystyrene foam clamshells, not other container types such as plates, bowls, and cups, and that the report cautions readers to avoid extrapolating the results of the clamshell greenhouse gas emissions to other food service products.

While it is true that paper products are typically more energy intensive and generate more greenhouse gas emissions, polystyrene products have a significant long-term impact on the environment in that these products do not biodegrade, are harmful to marine life, and their production is more toxic. Correspondence from Save the Bay (dated July 6, 2010; Attachment VII) responds to ACC's letter, as do documents submitted by Clean Water Action (dated August 3, 2010; Attachment VIII).

Attendees also discussed the significant adverse environmental impacts cited in ACC's letter if a polystyrene foam ban were implemented, as well as the merits of an analysis of the life cycle (i.e., cradle-to-grave) impacts of polystyrene foam food service ware compared to recyclable food ware products. One of the documents cited in ACC's letter is a life cycle study conducted by Franklin Associates, Ltd. which compares expanded polystyrene to plastic-coated bleached paperboard disposable cups ("Life Cycle Inventory of Foam and Coated Paperboard Plates, Revised Peer-Reviewed Final Report", Prepared for PACTIV, December 2009[5].)

The study quantifies the fuel and raw materials consumed and emissions released into the environment and compares recyclability, combustion, and landfill impacts of the two products. It concludes that, at 0% recycling of the two products, expanded polystyrene products require 30% less total energy than paper, and that expanded polystyrene has fewer environmental impacts in most of the categories that were studied. The study, however, does not examine the impacts of expanded polystyrene or paper food ware products as marine litter or their potential effects on human health. In the area of solid waste, the study does factor the potential existence of a recycling program that accepts paper or compostable food ware products.

The manufacturing processes of plastic and paper have comparable environmental impacts in terms of energy and resource consumption. However, paper products are preferable when effects on marine litter and human health are considered. Furthermore, unbleached paper products are preferable to bleached paper products; the life cycle impacts of paper products can be reduced with food waste collection programs, such as those offered to Hayward businesses.

In response to a query regarding the reference to the term 'project' in the Draft Negative Declaration, the City Attorney has confirmed that the 'project' is the adoption of the proposed ordinance and is consistent with the California Environmental Quality Act. On request from a Committee member, staff discussed the proposed provisions of the ordinance with the Food Services Director of St. Rose Hospital and has received confirmation that that hospital would be able to comply with the proposed ban because the effective date of the ordinance would allow staff to deplete its current inventory. Staff also mailed a copy of the CSC report to the Food Services Director. City staff has also confirmed with the Kaiser Hospital Food Services Director that its

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[4] **https://www.seattle.gov/util/stellent/groups/public/@spu/@csb/documents/webcontent/spu02_014616.pdf**
[5] **http://www.pactiv.com/About_Pactiv/LCI_Foam_PaperPlates_FinalReport.aspx)**

cafeteria only offers paper containers and that only reusable trays and paper cups are used for in-room patient meals. A copy of the CSC report was also mailed to the Kaiser Hospital contact.

In response to Committee members' questions, staff indicated that passage of a statewide ban on polystyrene foam food service ware is not anticipated this year nor possibly even next year. Council Member Olden Henson added that the lobbyist for StopWaste.Org advised that the focus by various environmental groups is to oppose efforts to pass Proposition 23, which would suspend the state's requirement to reduce greenhouse gas emissions to 1990 levels within the next ten years. If approved, that proposition would suspend all provisions of the state law until unemployment levels drop to 5.5% or lower for a full year.

While recognizing the environmental benefits of the City's proposed ban, some Committee members expressed concerns regarding the adequacy of the cost impacts and asked that more information be provided when the item is forwarded to Council for consideration. Specifically, members asked that staff review the cost analysis performed by other cities that have recently implemented a similar ordinance. Staff looked into what other cities have done but as indicated above did not find any more detailed analysis than is described in the Economic Impact section of this report. Some members stated that their participation in referring the item to Council did not mean that they were necessarily supporting the ordinance in its current format. Five of the seven members indicated support for the proposed ordinance and two indicated some concerns, as cited above.

In conclusion, the CSC recommended forwarding the item to the City Council with a recommendation for approval. One member of the Committee felt that he could forward the item to Council as long as Council would discuss the item further in a meeting with public input.

July 12, 2010, Economic Development Committee – This item was taken to the Economic Development Committee (EDC) for its input. Staff described the scope of the proposed ordinance, the economic and fiscal impacts, and staff's efforts to solicit comments from the public regarding the ordinance. Following discussion, Committee members voted six to two to recommend that the ordinance become effective January 1, 2012, rather than July 1, 2011, as proposed in the report to the CSC. Staff continues to recommend that the ordinance become effective July 1, 2011 to reduce the adverse environmental effects of polystyrene, as described in the background section of the July 7, 2010 CSC report (Attachment IV).

August 5, 2010, Government Relations Committee of the Chamber of Commerce – Staff summarized the proposed provisions of the ordinance and the anticipated economic impacts of the ordinance. The Chamber reviewed this item at its August 25 meeting and at that time determined that it would not take a position on the ban. However, on September 23, 2010, after another meeting of its Government Relations Committee that included a presentation from the American Chemistry Council, the Chamber Board did submit a letter to the Mayor (Attachment IX) requesting that the City delay consideration of the ban or a delay in its implementation date.

The Chamber's letter raised concerns about economic impacts, as well as arguments that such bans are not effective on litter and not necessarily better for the environment. It is understood that St Rose Hospital is the referenced large employer that identified an annual cost of $140,000 to implement the ordinance. Certainly there are costs, but staff believes, as with the other cities that

have implemented similar bans, there are environmental benefits and that costs over time should be reduced.

Survey of Restaurants' Use of Polystyrene Foam Food Service Ware - Staff has expanded its survey of restaurants to include a total of ninety-five primarily non-chain, small to medium-size restaurants in the City of Hayward, including those that offer seating and those that offer take-out with some limited seating. The purpose of the surveys was to invite comments regarding the extent of use and monthly costs for polystyrene foam plates and containers relative to their other regular expenses, (e.g., labor, food and rent.) Nearly 75% of the businesses surveys were conducted with owners or managers at their business locations and the others were conducted via phone.

The responses by businesses were similar to those reported in the CSC Report: nearly all reported using polystyrene foam containers, particularly for their take-out service, and many reported using some other plastic or paper food service ware. Business owners indicated that they also used some take-out containers made of paper or other recyclable products, and expressed concern about the additional costs to purchase paper containers. Many of the small and medium-size restaurants readily accepted a sample biodegradable container offered by City staff to test its suitability, in part because some business owners reported unsatisfactory experiences with paper containers used previously. Since receiving the paper container provided by City staff, about ten of those businesses indicated that the heavier paper container was preferable to the lighter one that each had previously tested.

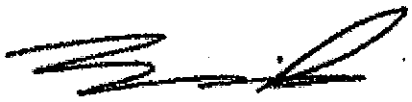
SCHEDULE

City Council Introduction of Ordinance and Public Hearing	October 12, 2010
Outreach Materials Developed and Disseminated to Affected Food Vendors	Beginning November 2010
Six-Month Period to Allow Depletion of Inventory and Conduct Necessary Business Outreach	December 2010-May 2011
Effective Date of New Ordinance	July 1, 2011

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert A. Bauman, Director Public Works

Approved by:



Fran David, City Manager

Attachments:

Attachment I –	Resolution Adopting the Initial Study for the Enactment of an Ordinance Prohibiting the Use of Polystyrene Foam Disposable Food Service Ware
Attachment II –	Draft Ordinance
Attachment III –	Draft Negative Declaration
Attachment IV –	Council Sustainability Committee Report dated July 7, 2010
Attachment V –	Minutes of July 7, 2010 Council Sustainability Committee Meeting
Attachment VI –	Correspondence from American Chemistry Council
Attachment VII –	Correspondence from Save the Bay
Attachment VIII –	Correspondence from Clean Water Action
Attachment IX –	Chamber of Commerce September 23, 2010 Letter

ATTACHMENT I

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

Introduced by Council Member_____

RESOLUTION ADOPTING THE INITIAL STUDY AND NEGATIVE DECLARATION FOR THE ENACTMENT OF AN ORDINANCE PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

WHEREAS, in March, 2010, the Council Sustainability Committee (the "CSC") directed staff to prepare a report and draft ordinance prohibiting the use of polystyrene foam disposable food service ware, which report and ordinance were considered by the CSC at its meeting on July 7, 2010: and

WHEREAS, an initial study and negative declaration have been prepared and processed in accordance with City and CEQA guidelines, analyzing the potential environmental impacts of enacting the ordinance prohibiting the use of polystyrene foam disposable food service ware; and

WHEREAS, on September 15, 2010, a Notice of Intent to Adopt a Negative Declaration was published in *The Daily Review*. Copies of the Negative Declaration and Initial Study Checklist were posted 20 days, from September 15, 2010, through October 4, 2010, for public review in accordance with CEQA. No correspondence was received related to such notice during this period; and

WHEREAS, the City Council of the City of Hayward has independently reviewed and considered the information contained in the initial study upon which the negative declaration is based, certifies that the negative declaration has been completed in compliance with the requirements of the California Environmental Quality Act, and finds that the negative declaration reflects the independent judgment of the City of Hayward.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD that the enactment of the ordinance prohibiting the use of polystyrene foam disposable food ware will not have a significant effect on the environment, and an Initial Study and Negative Declaration have been prepared pursuant to the California Environmental Quality Act, which reflect the independent judgment of the City of Hayward, and are hereby adopted.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

ORDINANCE NO. 10-_____

ORDINANCE AMENDING CHAPTER 5, BY ADDING ARTICLE 11 OF THE HAYWARD MUNICIPAL CODE RELATING TO SANITATION AND HEALTH TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND TO REQUIRE RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE WITHIN CITY LIMITS

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

Section 1. LEGISLATIVE FINDINGS AND DECLARATIONS. The City Council hereby adopts the following findings and declarations in support of this Ordinance.

The City of Hayward has a duty to protect the natural environment, the economy, and the health of its citizens.

Food service polystyrene foam causes unique litter management issues because it is light weight, floats in water, and is easily blown by the wind from place to place, even when disposed of properly. Polystyrene foam can enter creeks or storm drains, whether directly or indirectly, and is observed during street sweeping activities and local creek clean up events.

Polystyrene litter, especially expanded polystyrene foam, is a threat to natural ecosystems due to its tendency to break into smaller pieces that are similar in size and appearance to the food of some wildlife species. These small pieces can be ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation.

Banning polystyrene foam disposable food service ware in the City of Hayward will help address pollution by requiring reusable containers, where possible, or the use of compostable or recyclable alternatives, while helping inform business owners and citizens about the positive impact their packaging choices can make.

CalRecycle has estimated that Californians use 165,000 tons of polystyrene foam each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product locally.

For these reasons, a number of municipalities in California have banned polystyrene foam food service ware, and some local businesses and several national corporations have successfully replaced polystyrene foam with recyclable or compostable food service ware.

The City's goal is to replace polystyrene foam disposable food service ware with alternative products that are reusable, where possible, or are recyclable or compostable.

Section 2. Upon the adoption of this Ordinance, Sections 5-11.00 through 5-11.06, adding Article 11 to Chapter 5 of the Hayward Municipal Code, relating to a ban on polystyrene foam food service ware, are hereby enacted to read as follows:

"ARTICLE 11
POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED;
RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

Section	Subject Matter
5-11.00	DEFINITIONS
5-11.01	PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE
5-11.02	REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE
5-11.03	EXCEPTIONS
5-11.04	ADMINISTRATIVE RULES AND REGULATIONS
5-11.05	ENFORCEMENT AND PENALTIES
5-11.06	CONSTRUCTION AND PREEMPTION

SEC. 5-11.00 DEFINITIONS. For the purposes of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

a. ASTM-Standard. ASTM Standard means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

b. Biodegrade/Biodegradable. Biodegrade or Biodegradable means the entire product or package will completely break down and return to nature, i.e.,

decompose into elements found in nature within a reasonably short period of time after customary disposal.

c. City Facility. City Facility means any building, structure, land or park owned or operated by the City of Hayward, its agents and departments and includes City buildings, structures, parks, recreation facilities or property.

d. City Facility Users. City Facility Users means all persons, societies, associations, organizations or special events promoters who require a permit to reserve or rent a City Facility or a permit or contract to use a plaza, sidewalk, or roadway, as further described in Hayward Municipal Code Chapter 3, Public Safety, Article 5, Section 3-5.10 Temporary Use of Sidewalk or Roadway. City Facility Users also includes concession contracts with the City, City-managed concessions, City-sponsored events and food services provided at City expense.

e. Compostable. Compostable means that all materials in the product or package will Biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM-Standard Compostable plastic from non-ASTM-Standard Compostable plastic.

f. Disposable Food Service Ware. Disposable Food Service Ware means a product used by a Food Vendor for serving or transporting prepared and ready-to-consume food or beverages which is commonly disposed of after a single use. Disposable Food Service Ware includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids.

g. Food Vendor. Food Vendor means any establishment located within the City of Hayward, or any establishment which provides Prepared Food or beverages for public consumption within the City of Hayward, including but not limited to any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

h. Polystyrene Foam. Polystyrene Foam means a thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol #6, 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), sometimes referred to as Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, Polystyrene Foam is generally used to make cups, bowls, plates, trays, and clamshell containers intended for a single use.

i. Prepared Food. Prepared Food means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by Food Vendor. Prepared Food does not include uncooked meat, fish, poultry, or

eggs unless provided for consumption without further food preparation, such as sushi. Prepared Food may be eaten either on or off the premises, also known as "take-out food."

j. Recyclable. Recyclable means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which is identified as recyclable by the City in the City's municipal recycling program. For purposes of this Article, recyclable plastic does not include Polystyrene Foam labeled with resin symbol #6.

k. Special Events Promoter. Special Events Promoter means an applicant for any special events permit issued by the City or by any City employee(s) responsible for any organized special event within the City of Hayward.

SEC. 5-11.01 PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.

a. Except as provided by Section 5-11.03, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made from Polystyrene Foam.

b. Except as provided by Section 5-11.03, all City Facility Users are prohibited from using Disposable Food Service Ware made from Polystyrene Foam.

SEC. 5-11.02 REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE.

a. All Food Vendors using any Disposable Food Service Ware shall use a suitable Recyclable or Compostable product.

b. All City Facility Users shall use a suitable Recyclable or Compostable product for Disposable Food Service Ware.

SEC. 5-11.03 EXCEPTIONS.

a. Foods prepackaged outside the limits of the City of Hayward are excluded from the provisions of this Article, but the purveyors of foods prepackaged outside of the limits of the City of Hayward are encouraged to follow these provisions as it is the City's policy goal to eliminate the use of Polystyrene Foam Disposable Food Service Ware.

b. Coolers and ice chests that are intended for reuse are excluded from the provisions of this Article.

c. The City Manager may except a Food Vendor or City Facility User from the requirements set forth in Section 5-11.02 for a period of time to be determined by the City Manager on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the Food Vendor or City Facility User not generally applicable to other persons in similar circumstances.

d. Food Vendors and City Facility Users seeking an exception from the requirements of this Article shall include all information on the application for exception to allow the City to make its decision, including but not limited to, documentation showing factual support for the claimed exception. The City Manager shall confirm the decision to grant or deny each exception in writing and may approve an exception request in whole or in part. The decision of the City Manager shall be final.

e. Emergency supplies or services procurement. City Facility Users and Food Vendors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

SEC. 5-11.04 ADMINISTRATIVE RULES AND REGULATIONS. The City Manager may make such rules and regulations, consistent with the provisions of this Article, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

SEC. 5-11.05 ENFORCEMENT AND PENALTIES .

a. The City Manager or his/her designee shall have primary responsibility for enforcement of this Article. If the City Manager or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Food Vendor that a violation has occurred. Subsequent violations of this Article by a Food Vendor shall be subject to the enforcement and penalties set forth below.

b. Each and every sale or other transfer of Disposable Food Service Ware made from Polystyrene Foam shall constitute a separate violation of this Article.

c. Any violation of this Article that occurs after the issuance of a written warning to a Food Vendor is subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the City Council. Any citation issued for a violation of this Article shall give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.

d. The City Attorney may seek legal, injunctive or other equitable relief to enforce this Article.

e. The remedies provided herein are cumulative and not exclusive.

SEC. 5-11.06 CONSTRUCTION AND PREEMPTION. This Article and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this Article. This Article is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-City or interstate commerce. It shall be construed with that intent."

Section 3. Severability. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this Ordinance shall become effective July 1, 2011.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2010, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2010, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

CITY OF
HAYWARD
HEART OF THE BAY

DEPARTMENT OF PUBLIC WORKS – UTILITIES DIVISION

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. *PROJECT DESCRIPTION*:

Expanded Polystyrene Food Service Ware Ban as Hayward Municipal Code Amendment
The City of Hayward has initiated a Hayward Municipal Code (HMC) Amendment that would add Article 11, Chapter 5 to the HMC to prohibit the use of polystyrene foam disposable food service ware by food vendors within the City. Items to be prohibited include single-use disposable products used for serving or transporting prepared food and beverages, e.g., plates, cups, bowls, lids, trays, ad hinged or lidded containers. Not included in this prohibition are single-use disposal straws, utensils, or hot cup lids. Food vendors are establishments that provide prepared food or beverages. Instead of using polystyrene foam disposable food service ware, these food vendors, as well as users of City facilities, would be required to use recyclable or compostable food service ware. Recyclable food service ware includes plastics with a resin number of 1, 2, 3, 4, 5, 6, or 7 (*excluding* No. 6 polystyrene foam ware), as well as aluminum and glass containers. Compostable food service ware includes items manufactured from vegetable- or sugar-based materials, and natural fibers (e.g., paper ware). The anticipated effective date of the proposed HMC amendment is July 1, 2011.

II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT*:

The proposed project could not have a significant effect on the environment.

III. *FINDINGS SUPPORTING DECLARATION*:

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

2. The project will not result in any development that would adversely affect any scenic resources.

3. The project will not result in any development that would have an adverse effect on agricultural land.

Department of Public Works
Solid Waste & Recycling

777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4725 • Fax: 510/583-3610 • TDD: 510/247-3340

4. The project will not result in any development that would have significant impacts related to changes in air quality.

5. The project will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.

6. The project will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.

7. The project will not affect geological hazards.

8. The project would not generate greenhouse gas emissions or be in conflict with an applicable plan, policy or regulation adopted to reduce greenhouse gas emissions.

9. The project would have no impact on hazards or hazardous materials.

10. The project will not affect water quality standards.

11. The project is not in conflict with the policies of the City General Policies Plan, or the Zoning Ordinance.

12. The project could not result in a significant impact to mineral resources since no construction will take place as part of this project.

13. The project could not result in a significant noise impact.

14. The project would have no impact on population or housing.

15. The project could not result in a significant impact to public services.

16. The project would have no impact on recreation.

17. The project could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.

18. The project could not result in a significant impact to parking.

19. The project would have no impact on utilities or service systems.

IV. *PERSON WHO PREPARED INITIAL STUDY*:

Signature: _____ Dated: June 15, 2010

Vera Dahle-Lacaze, Solid Waste Manager

V. *COPY OF INITIAL STUDY IS ATTACHED*

For additional information, please contact the City of Hayward Public Works Department, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4725

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing. Provide copy to Alameda County Clerk's Office.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

CITY OF
HAYWARD
HEART OF THE BAY

DATE: July 7, 2010

TO: Council Sustainability Committee

FROM: Director of Public Works

SUBJECT: Proposed Ban on Polystyrene Foam Food Service Containers

RECOMMENDATION

That the Committee reads and comments on this report.

SUMMARY

At its March 3, 2010 meeting, the Council Sustainability Committee directed staff to prepare a report and draft necessary documents, including a draft ordinance, concerning prohibition of the use of polystyrene foam food service containers. The primary goal of the ordinance would be to restrict food vendor use of polystyrene foam food service containers and to create a shift to multiple-use containers, where possible. Where multiple-use containers are not viable, the desired shift would be to plastic or paper containers that could be recycled or composted. The proposed ordinance would be consistent with Action 6.4 of the City of Hayward's adopted Climate Action Plan to evaluate banning polystyrene from landfills. Copies of the Draft Ordinance and Draft Negative Declaration are attached to this report. A Draft Initial Study has been prepared and is on file.

BACKGROUND

Polystyrene foam is commonly, but mistakenly, known by the name Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation. It is formed by adding a blowing agent to polystyrene, a petroleum-based plastic material. Most foam cups and bowls are made from expanded polystyrene using a process that heats polystyrene beads in a mold so that the beads expand and adhere to one another. Other foam containers, such as clamshells and trays, are made from extruded polystyrene, which is foamed as it is extruded. Polystyrene foam is extremely light weight (about 95 percent air), has good insulation properties, and is used in products from cups that keep beverages hot or cold to materials that keep items safe during shipping. Clear and solid polystyrene is used to make salad containers, cold cups, and eating utensils. CalReycle (formerly the California Integrated Waste Management Board) estimates that Californians use 165,000 tons of expanded polystyrene annually for packaging and food service purposes.

Unfortunately, polystyrene is difficult and costly to recycle and has some environmental drawbacks. Polystyrene products are inexpensive in part because the costs to collect and dispose of this product are deferred to the public and the environment. Food service polystyrene foam causes unique litter management issues because it is light weight, floats in water, and is easily blown by the wind from place to place, even when disposed of properly. Polystyrene foam can enter creeks or storm drains, whether directly or indirectly, and is observed during street sweeping activities and local creek clean up events. Staff estimates that polystyrene foam comprises about 15 percent of the volume of litter collected from Hayward's storm drains, based on data compiled in the 2008 Waste Characterization Study for Alameda County. Waste Management of Alameda County, the City's solid waste and recycling contractor, has confirmed that it has no recycling market for polystyrene foam. It should be noted that Hayward's recycling programs accepts all clean plastic bottles and containers with resin #1through #7, though there is no market for polystyrene foam, which is identified as resin #6. All plastic bottles and containers #1-7, including #6, are accepted because studies have shown that residents and businesses recycle more of the acceptable plastics when all numbered containers are permitted.

Polystyrene litter, especially expanded polystyrene foam, is a threat to natural ecosystems due to its tendency to break into smaller pieces that are similar in size and appearance to the food of some wildlife species. These small pieces can be ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation. Food service polystyrene is also a one-time use product that degrades slowly in nature. A CalRecycle report has noted that "in the categories of energy consumption, greenhouse gas effect and the total environmental effect, polystyrene's environmental impacts were second highest, behind aluminum." (*Use and Disposal of Polystyrene in California*, California Integrated Waste Management Board, December 2004).

DISCUSSION

Adoption of Bans by Other Municipalities - Nearly 100 municipalities nationwide, including 35 in California, have banned polystyrene foam food service ware. Cities in Alameda County that have adopted such ordinances and the effective dates include Alameda (January 2008), Albany (September 2008), Berkeley (January 1990), Emeryville (January 2008), Fremont (January 2011) and Oakland (January 2007). Some other cities and counties nearby that have adopted an ordinance and the effective dates include Marin County (January 2010), Millbrae (January 2008), Palo Alto (April 2010), Richmond (July 2010), San Bruno (April 2010), San Francisco (June 2007), San Mateo County (July 2010) and South San Francisco (October 2008).

The City Council for the City of Fremont approved its proposed ban on polystyrene foam food service ware on May 11, 2010. Staff from Fremont indicated that local businesses did not oppose the ban, that the Fremont Chamber of Commerce supports the ban, and that it received letters from the American Chemistry Council and the California Restaurant Association opposing the ban. Fremont staff also indicated that a representative from the California Restaurant Association spoke in opposition to the ban during the public hearing. Representatives from the following groups spoke in support of the Fremont ban: Save the Bay and Clean Water Action.

Status of Legislation - As indicated in the March 3, 2010, report to the Committee, AB 1358 (Hill), which would have prohibited food vendors from distributing polystyrene food packaging, is a two-year bill and will be inactive until next year. Likewise, AB 2138 (Chesbro), which is broader in scope than AB 1358 and had replaced AB 1358, will not receive further consideration. Supporters of both bills included AFSCME, AFL-CIO, City and County of San Francisco, Planning and Conservation League, and Sierra Club of California. Those opposed included a host of different groups, such as the American Chemistry Council, the California Chamber of Commerce, and the California Grocers Association.

Recommended Provisions - Staff has reviewed ordinances of each municipality listed above and has discussed various aspects of those ordinances with staff from several cities that have already implemented an ordinance banning polystyrene. The proposed ordinance for the City of Hayward takes into account comments from other cities and includes the components that staff believes are most relevant and productive to achieve the City's goals of reducing trash and using more sustainable products, as well as those of the City's business community and citizens.

Staff recommends that the ordinance apply to any retail establishment located within the City that provides prepared food or beverages including, for example, restaurants, supermarkets, delicatessens, sales outlets, shops, outdoor vendors, cafeterias, catering trucks, caterers, special events promoters, farmers markets, and retail food vendors. The ordinance would also apply to the City of Hayward and its facilities, including permit holders, though would not apply during emergency response actions. If the ordinance is adopted by the City Council, staff from the Hayward Area Recreation and Park District (HARD) has confirmed that their agency would implement the same provisions District-wide with their contracted vendors, senior center, and concessions at Kennedy Park. However, HARD staff will not attempt to control compliance by park patrons. As with most other City ordinances, the Hayward Unified School District will not be subject to the ordinance.

The proposed ordinance would require the use of compostable or recyclable take-out food service ware, rather than polystyrene foam containers, for any food or beverage prepared for consumption within the City using any cooking, packaging, or preparation techniques by the food vendor. This requirement would not apply to uncooked meat, fish, poultry, or eggs, unless provided for consumption without further preparation, such as sushi. The definition of food service ware would include plates, cups, bowls, trays, and hinged and lidded containers. Items often associated with take-out food service but not restricted by the ordinance, as these items are not typically made of polystyrene foam, would include single-use straws, coffee stirs, utensils or hot-cup lids.

Alternative products to polystyrene foam are readily available and are used in other cities with similar packaging bans. These recyclable or compostable alternative products include paper-based packaging, compostable plant-based packaging, recyclable plastic packaging identified as recyclable by the City in its municipal recycling program, and aluminum packaging. For purposes of this proposed ordinance, compostable would mean that all the materials in the product or package will break down into, or otherwise become part of, usable compost, such as a soil amendment.

Rigid plastic containers are also currently available in many shapes, sizes, and styles for use instead of polystyrene foam. Aluminum packaging is also an acceptable alternative to polystyrene packaging, as aluminum has well-established recycling markets.

ENVIRONMENTAL REVIEW

Staff has conducted an initial study and concluded that implementation of the proposed Hayward Municipal Code amendment to ban use of polystyrene foam food service containers by food vendors within the City of Hayward will not have a significant adverse impact on the physical environment. Hence, a negative declaration has been prepared.

ECONOMIC IMPACT

The estimated per-unit costs to buy recyclable and biodegradable containers range from two to four times more than polystyrene foam food service ware, depending on the container type, weight, and durability, according to three vendors who sell recyclable and biodegradable containers to cities, universities, and private sector companies. To assess the actual cost differential between polystyrene foam containers compared to sustainable paper-based products, staff visited a wholesale business (Costco Business Center) and recorded the cost of the two types of containers. On average, a hinged polystyrene container cost about $0.10 each, while the equivalent paper container cost about twice as much. Thus, the cost impact per food product purchased using this particular container could be $0.10 to $0.15 more.

If, for a low-price restaurant, the cost per food item is assumed to be about $4.00 to $5.00, the cost of the polystyrene foam container would be close to 2% of the total cost. If this restaurant switched to a more sustainable product, the container cost would be about $0.20 to $0.25, or about 4% - 5% of the cost. Therefore, the additional cost of switching to a sustainable container would be 2% - 3% of the revenue of the portion of food that is sold using polystyrene foam containers. The largest impact would be incurred by restaurants using polystyrene foam for both takeout and inside dining. For restaurants that do not use polystyrene foam plates for in-store dining, or where takeout is not a major part of the business, the impact would be much less. In terms of real dollars, based on the survey of the restaurants and other information gathered, staff estimates the additional cost to be between $150 - $250 per month for most small- to medium-size retail food establishments.

Assuming that this cost cannot be passed on to customers and, if absorbed by the food vendor, this amount will need to come from each business' earnings. Actual costs for an alternative product would be largely dependent on the amount and types of disposable food service ware used. Some businesses have identified cost-neutral alternatives to replace polystyrene foam food service ware, according to staff from other cities. As demand for alternative products increases, the development of new products at cost-competitive rates could occur.

Enforcement of this ordinance would be on a complaint basis and reported to the Public Works Department for response by Solid Waste Program staff. The City Manager or designee would be authorized to enforce the ordinance and issue fines for uncorrected violations. Food vendors would

be exempt for a period of time on a case-by-case basis for undue hardship after the effective date of the ordinance. Undue hardship would include, for example, conditions unique to the food vendor not typically applicable to other vendors in similar circumstances. The City Manager or designee would have the authority to determine if a violation occurred and issue a written warning notice to the food vendor.

Staff would work with food vendors to provide the necessary education to comply with the ordinance. While business outreach would be the primary tool to encourage the switch to more sustainable products, fines would be used as a last resort for vendors that continue to violate the ordinance. Violation of the proposed ordinance would require a written warning to the food service vendor. Any violation that occurs after a written warning has been issued would be subject to civil and administrative enforcement and may include a fine established by resolution of the City Council. Citations issued for a violation would include the vendor's right to an administrative hearing to challenge the validity of the citation and a time for requesting that hearing in accordance with the City's Municipal Code.

FISCAL IMPACT

The ordinance would be implemented by Solid Waste Program staff using available Recycling Fund monies. No impact to the General Fund is anticipated.

PUBLIC CONTACT

Public Meetings Inviting Comments - On June 4, staff mailed a letter (copy attached) to over 350 restaurants, other retail food service establishments, and the Chamber of Commerce inviting comments regarding the proposed ordinance. The letter described the proposed provisions of the ordinance and identified two informational meetings scheduled for the convenience of business owners: 3:00 p.m. on June 21 and 7:00 p.m. on June 22, both of which were held at City Hall. Informational literature describing the assistance available to businesses to implement collection of mixed recyclables and organics collection were provided at both meetings. The letter also invited all business owners to the July 7 Council Sustainability Committee meeting.

Those attending the June 21 meeting included Council Member May; Greg Jones of Hayward; Johnnise Downs, a representative from the California Restaurant Association (CRA); Simon Wong, a reporter from the *Tri-City Voice* newspaper; and Allen King, a local vendor that sells biodegradable food service ware. Mr. Jones was the sole attendee at the June 22 meeting. Following is a summary of each attendee's comments and staff's response:

- Council Member May explained that the additional cost to buy recyclable or biodegradable containers would disproportionally impact smaller restaurants, particularly those that serve food on polystyrene foam plates and/or that a significant portion of their business is take-out service using polystyrene foam containers. She recommended that, if the ordinance is approved by Council, a surcharge be applied when a recyclable or compostable container is required. She further recommended that businesses be offered stickers for display to their

customers to acknowledge use of the containers. Ms. May explained that some businesses may choose to pass along the cost to their customers by posting a notice attributing an increase in costs due to the adopted ordinance.

Council Member May asked whether stores selling polystyrene foam food service containers, such as Costco and Smart and Final, would be subject to the ordinance. Staff responded that retail sales of such containers would not be subject to the ordinance. However, the Costco retail on-site food counter would be subject to the ordinance, although it does not appear that very much polystyrene foam food ware is used there.

Council Member May also asked if the ordinance had been referred to and discussed at the City's Economic Development Committee (EDC). Staff indicated that the provisions of the ordinance will be summarized at the July 12 EDC meeting, and that the EDC's comments and suggestions will be included in the Council Report, tentatively scheduled for a public hearing and Council action in September. Council Member May added that the proposed ordinance should have been presented to the EDC for review before being presented to the Council Sustainability Committee.

- Mr. Jones recommended consideration for a phased application of the ordinance with larger businesses required to comply first and smaller businesses required to comply at a later date. Businesses could be categorized based on annual sales or number of employees, for example.

  In response to Mr. Jones' question regarding which businesses would be subject to the ordinance, staff indicated that the proposed ordinance would apply to all businesses that provide prepared food or beverages, regardless of the number of employees or annual sales. Mr. Jones also recommended that the City Council actively support adoption of statewide legislation.

- Ms. Downs, the CRA representative, explained that some of their membership has reported needing to use two biodegradable containers to avoid leakage of food from the containers, thus increasing their costs to comply with municipalities' regulations. She also indicated that some of the larger chain restaurants had not fully complied with ordinances in other nearby jurisdictions.

  In response to Ms. Downs' question regarding specific provisions of the ordinance, staff indicated that only polystyrene foam containers and not clear polystyrene containers, would be subject to the ordinance.

Contact with Chamber of Commerce - Staff has contacted the Chamber's Interim CEO, Brian Schott, and discussed this issue. Mr. Schott indicated that the Chamber's Board had not formally discussed or taken a position on this issue yet. He said the new Board will be seated as of July 1, and its first meeting would be on July 22. Mr. Schott further indicated that the Board's Government Relations Council, which meets on the 2nd Thursday of the month (July 8th) at 7:45 a.m., would be a good venue for City staff to attend and discuss this issue. He said after that the

Board can discuss the issue and take a position, and, realistically, that could happen at the Board's meeting in late August.

Staff advised Mr. Schott of the schedule for going before the Council's Sustainability Committee on July 7 and, if approved by that Committee, to hold a public hearing before the Council, tentatively scheduled for September. Mr. Schott indicated the timing of the City Council meeting would work well for the Chamber of Commerce; by then its Board should have met. Staff requested a written indication of the position of the Board after its action, and the Chamber's CEO graciously agreed to provide that.

Survey of Restaurants' Use of Polystyrene Foam Food Ware - Staff conducted a survey of 56 primarily non-chain, small to medium-size restaurants in the City of Hayward, including those that offer seating and those that offer take-out with some limited seating. The purpose of the survey was to invite comments regarding the extent of use and monthly costs for polystyrene foam plates and containers relative to their other regular expenses, e.g., labor, food and rent. Nearly half of the businesses surveyed were conducted with owners at their business location and the others were conducted via phone. Of the businesses surveyed, nearly all reported using polystyrene foam containers, particularly for their take-out service, and many reported using some other plastic or paper food service ware. Business owners indicated that they also used some take-out containers made of paper or other recyclable products and expressed concern about the additional costs to purchase paper containers. Business owners reported varying monthly costs due to the services offered. Staff's cost estimate of the impact of the ordinance of $0.10 to $0.15 per food product is described earlier in the report.

In response to offers by City staff, several of the small and medium-size restaurants accepted a sample biodegradable container to test its suitability. Containers were offered so that businesses could test the containers in part because some business owners reported unsatisfactory experiences with paper containers used previously. Businesses serving pizza and hamburgers reported using paper take-out containers, as did Carrow's, Sapporo Restaurant and Zorba's Delicatessen. Additional information summarizing the survey results is included in Attachment IV.

Proposed Outreach Program - If the proposed ordinance is recommended for approval by the Sustainability Committee for Council's consideration, staff would work with the Hayward Chamber of Commerce to solicit more input from the business community regarding the plans for the proposed ban on polystyrene foam food service ware. Staff would convene meetings with the Chamber and businesses, mail literature describing the terms of the proposed ban, and schedule additional meetings. In addition to English, the literature would be prepared in Chinese and Spanish to restaurants and other food vendors.

If the ordinance is approved by the City Council, staff would implement an outreach and education plan that would describe the ordinance's provisions, including the reasons for doing so. The plan would identify appropriate alternative products for affected food vendors. Retail and wholesale food packaging vendors would be advised regarding acceptable products. Staff would continue to provide businesses with informational materials describing the recycling programs available to businesses under the City's contract with WMAC. Those services include collection of food and food-soiled paper at half the price of regular garbage service for the same size container, as well as

co-mingled collection of recyclables at no additional charge. Businesses that implement these programs could reduce their garbage bill and, thereby, mitigate the additional costs to buy biodegradable food service ware. Additionally, staff would disseminate information via newsletters, press releases, the City's website and links, as well as interaction with business associations and community groups. Direct site visits and other interaction with businesses would occur, when possible, to assist food vendors with product changes. Prior to the effective date of the ordinance, reminders to use existing inventory of polystyrene foam food service containers would be issued to food vendors.

If the ordinance is adopted by the City Council, staff proposes a six-month period during which time affected businesses would be encouraged to deplete their inventory of polystyrene foam takeout containers.

SCHEDULE

City Council Introduction of Ordinance and Public Hearing	September 21, 2010
Outreach Materials Disseminated to Affected Food Vendors	Beginning September 2010
Six-Month Period to Allow Depletion of Inventory	November 2010-May 2011
Effective Date of Proposed Ordinance	July 1, 2011

Prepared by: Alex Ameri, Deputy Director of Public Works

Recommended by: Robert A. Bauman, Director Public Works

Approved by:

Fran David, City Manager

Attachments:

Attachment I – Draft Ordinance
Attachment II – Draft Negative Declaration
Attachment III – Letter to Retail Businesses regarding the Proposed Ordinance
Attachment IV– Survey of Restaurants: Summary Responses Received

DRAFT

ORDINANCE NO. 10-_____

ORDINANCE AMENDING CHAPTER 5, BY ADDING ARTICLE 11 OF THE HAYWARD MUNICIPAL CODE RELATING TO SANITATION AND HEALTH TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE AND TO REQUIRE RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE WITHIN CITY LIMITS

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

Section 1. LEGISLATIVE FINDINGS AND DECLARATIONS. The City Council hereby adopts the following findings and declarations in support of this Ordinance.

The City of Hayward has a duty to protect the natural environment, the economy, and the health of its citizens.

Food service polystyrene foam causes unique litter management issues because it is light weight, floats in water, and is easily blown by the wind from place to place, even when disposed of properly. Polystyrene foam can enter creeks or storm drains, whether directly or indirectly, and is observed during street sweeping activities and local creek clean up events.

Polystyrene litter, especially expanded polystyrene foam, is a threat to natural ecosystems due to its tendency to break into smaller pieces that are similar in size and appearance to the food of some wildlife species. These small pieces can be ingested by marine wildlife, leading to reduced appetite and nutrient absorption and possible death by starvation.

Banning polystyrene foam food service ware in the City of Hayward will help address pollution by requiring reusable containers, where possible, or the use of compostable or recyclable alternatives, while helping inform business owners and citizens about the positive impact their packaging choices can make.

CalRecycle has estimated that Californians use 165,000 tons of polystyrene foam each year for packaging and food service purposes alone, and currently there is no economically feasible means of recycling this product in the City of Hayward.

A number of municipalities in California have banned polystyrene foam food service ware, and some local businesses and several national corporations have successfully replaced polystyrene foam with recyclable or compostable food service ware.

The City's goal is to replace polystyrene foam with alternative products that are reusable, where possible, or are recyclable or compostable.

Section 2. Upon the adoption of this Ordinance, Sections 5-11.00 through 5-11.06, adding Article 11 to Chapter 5 of the Hayward Municipal Code, relating to a ban on polystyrene foam food service ware, are hereby enacted to read as follows:

"ARTICLE 11
POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED;
RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE REQUIRED

Section	Subject Matter
5-11.00	DEFINITIONS
5-11.01	PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE
5-11.02	REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE
5-11.03	EXCEPTIONS
5-11.04	ADMINISTRATIVE RULES AND REGULATIONS
5-11.05	ENFORCEMENT AND PENALTIES
5-11.06	CONSTRUCTION AND PREEMPTION

SEC. 5-11.00 DEFINITIONS. For the purposes of this Article, certain words and

phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended.

a. ASTM-Standard. ASTM Standard means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

b. Biodegrade/Biodegradable. Biodegrade or Biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

c. City Facility. City Facility means any building, structure, land or park owned or operated by the City of Hayward, its agents and departments and includes City buildings, structures, parks, recreation facilities or property.

d. City Facility Users. City Facility Users means all persons, societies, associations, organizations or special events promoters who require a permit to reserve or rent a City Facility or a permit or contract to use a plaza, sidewalk, or roadway, as further described in Hayward Municipal Code Chapter 3, Public Safety, Article 5, Section 3-5.10 Temporary Use of Sidewalk or Roadway. City Facility Users also includes concession contracts with the City, City-managed concessions, City-sponsored events and food services provided at City expense.

e. Compostable. Compostable means that all materials in the product or package will Biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics (plastic-like) products that are clearly labeled so that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

f. Disposable Food Service Ware. Disposable Food Service Ware means a product used by a Food Vendor for serving or transporting prepared and ready-to-consume food or beverages which is commonly disposed of after a single use. Disposable Food Service Ware includes, but is not limited to, plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or hot cup lids.

g. Food Vendor. Food Vendor means any establishment located within the City of Hayward, or any establishment which provides prepared food or beverages for public consumption within the City of Hayward, including but not limited to any store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

h. Polystyrene Foam. Polystyrene Foam means a thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with resin symbol

#6, 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), sometimes referred to as Styrofoam™, a Dow Chemical Company trademarked form of polystyrene foam insulation. In food service, Polystyrene Foam is generally used to make cups, bowls, plates, trays, and clamshell containers intended for a single use.

i. Prepared Food. Prepared Food means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by Food Vendor. Prepared food does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation, such as sushi. Prepared Food may be eaten either on or off the premises, also known as "take-out food."

j. Recyclable. Recyclable means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning, whether as fuel or otherwise, so that they are returned to use by society. Recyclable plastics include any plastic which is identified as recyclable by the City in the City's municipal recycling program. For purposes of this Article, recyclable plastic does <u>not</u> include Polystyrene Foam labeled with resin symbol #6.

k. Special Events Promoter. Special Events Promoter means an applicant for any special events permit issued by the City or by any City employee(s) responsible for any organized special event within the City of Hayward.

<u>SEC. 5-11.01 PROHIBITED USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.</u>

a. Except as provided by Section 5-11.03, all Food Vendors are prohibited from providing Prepared Food in Disposable Food Service Ware made from Polystyrene Foam.

b. Except as provided by Section 5-11.03, all City Facility Users are prohibited from using Disposable Food Service Ware made from Polystyrene Foam.

<u>SEC. 5-11.02 REQUIRED USE OF RECYCLABLE OR COMPOSTABLE FOOD SERVICE WARE.</u>

a. All Food Vendors using any Disposable Food Service Ware shall use a suitable Recyclable or Compostable product.

b. All City Facility Users shall use a suitable Recyclable or Compostable product for Disposable Food Service Ware.

SEC. 5-11.03 EXCEPTIONS.

a. Foods prepackaged outside the limits of the City of Hayward are excluded from the provisions of this Article, but the purveyors of foods prepackaged outside of the limits of the City of Hayward are encouraged to follow these provisions as it is the City's policy goal to eliminate the use of Polystyrene Foam for Disposable Food Service Ware.

b. Coolers and ice chests that are intended for reuse are excluded from the provisions of this Article.

c. The City Manager may except a Food Vendor or City Facility User from the requirements set forth in Section 5-11.02 for a period of time to be determined by the City Manager on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the Food Vendor or City Facility User not generally applicable to other persons in similar circumstances.

d. Food Vendors and City Facility Users seeking an exception from the requirements of this Article shall include all information on the application for exception to allow the City to make its decision, including but not limited to, documentation showing factual support for the claimed exception. The City Manager shall confirm the decision to grant or deny each exception in writing and may approve an exception request in whole or in part. The decision of the City Manager shall be final.

e. Emergency supplies or services procurement. City Facility Users and Food Vendors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

SEC. 5-11.04 ADMINISTRATIVE RULES AND REGULATIONS. The City Manager may make such rules and regulations, consistent with the provisions of this Article, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

SEC. 5-11.05 PENALTIES AND ENFORCEMENT.

a. The City Manager or his/her designee shall have primary responsibility for enforcement of this Article. If the City Manager or his/her designee determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Food Vendor that a violation has occurred. Subsequent violations of this Article by a Food Vendor shall be subject to the penalties and enforcement set forth below.

b. Each and every sale or other transfer of Disposable Food Service Ware made

from Polystyrene Foam shall constitute a separate violation of this Article.

c. Any violation of this Article that occurs after the issuance of a written warning to a Food Vendor is subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the City Council. Any citation issued for a violation of this Article shall give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.

d. The City Attorney may seek legal, injunctive or other equitable relief to enforce this Article.

e. The remedies provided herein are cumulative and not exclusive.

SEC. 5-11.06 CONSTRUCTION AND PREEMPTION. This Article and any of its provisions shall be null and void upon the adoption of any state or federal law or regulation imposing the same, or essentially the same, limits on the use of prohibited products as set forth in this Article. This Article is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-City or interstate commerce. It shall be construed with that intent."

Section 3. Severability. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this Ordinance shall become effective July 1, 2011.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2010, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2010, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

CITY OF
HAYWARD
HEART OF THE BAY

DEPARTMENT OF PUBLIC WORKS – UTILITIES DIVISION

DRAFT NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. ***PROJECT DESCRIPTION*:**

Expanded Polystyrene Food Service Ware Ban as Hayward Municipal Code Amendment
The City of Hayward has initiated a Hayward Municipal Code (HMC) Amendment that would add Article 11, Chapter 5 to the HMC to prohibit the use of polystyrene foam disposable food service ware by food vendors within the City. Items to be prohibited include single-use disposable products used for serving or transporting prepared food and beverages, e.g., plates, cups, bowls, lids, trays, ad hinged or lidded containers. Not included in this prohibition are single-use disposal straws, utensils, or hot cup lids. Food vendors are establishments that provide prepared food or beverages. Instead of using polystyrene foam disposable food service ware, these food vendors, as well as users of City facilities, would be required to use recyclable or compostable food service ware. Recyclable food service ware includes plastics with a resin number of 1, 2, 3, 4, 5, 6, or 7 (*excluding* No. 6 polystyrene foam ware), as well as aluminum and glass containers. Compostable food service ware includes items manufactured from vegetable- or sugar-based materials, and natural fibers (e.g., paper ware). The anticipated effective date of the proposed HMC amendment is July 1, 2011.

II. ***FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT*:**

The proposed project could not have a significant effect on the environment.

III. ***FINDINGS SUPPORTING DECLARATION*:**

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

2. The project will not result in any development that would adversely affect any scenic resources.

3. The project will not result in any development that would have an adverse effect on agricultural land.

DEPARTMENT OF PUBLIC WORKS
SOLID WASTE & RECYCLING
777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4725 • Fax: 510/583-3610 • TDD: 510/247-3340

4. The project will not result in any development that would have significant impacts related to changes in air quality.

5. The project will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.

6. The project will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.

7. The project will not affect geological hazards.

8. The project would not generate greenhouse gas emissions or be in conflict with an applicable plan, policy or regulation adopted to reduce greenhouse gas emissions.

9. The project would have no impact on hazards or hazardous materials.

10. The project will not affect water quality standards.

11. The project is not in conflict with the policies of the City General Policies Plan, or the Zoning Ordinance.

12. The project could not result in a significant impact to mineral resources since no construction will take place as part of this project.

13. The project could not result in a significant noise impact.

14. The project would have no impact on population or housing.

15. The project could not result in a significant impact to public services.

16. The project would have no impact on recreation.

17. The project could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.

18. The project could not result in a significant impact to parking.

19. The project would have no impact on utilities or service systems.

IV. *PERSON WHO PREPARED INITIAL STUDY*:

Signature: _____ Dated: June 15, 2010

Vera Dahle-Lacaze, Solid Waste Manager

V. *COPY OF INITIAL STUDY IS ATTACHED*

For additional information, please contact the City of Hayward Public Works Department, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4725

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing. Provide copy to Alameda County Clerk's Office.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

CITY OF
HAYWARD
HEART OF THE BAY

June 7, 2010

Dear Hayward Business Owner:

We would like to invite your comments about a proposed ordinance that would ban polystyrene foam (Styrofoam™) containers currently used by retail businesses located in the City of Hayward. Given the adverse environmental impacts of polystyrene foam products, the City of Hayward Council Sustainability Committee has expressed concerns about the continued use of these containers, and has asked City staff to prepare a staff report with supporting documentation so that the Committee can consider the issue and make a recommendation to the City Council regarding the use of these containers. If recommended by the Committee, staff will schedule a public hearing before the City Council to discuss this issue sometime in September. If the ordinance is approved, retail businesses would be required to replace polystyrene foam containers, which are currently non-recyclable, with recyclable plastic or compostable paper containers that are accepted in the City's recycling programs offered to residents and businesses.

The ordinance would apply to retail businesses located within the City that provide prepared food or beverages including, for example, restaurants, delicatessens, supermarkets, outdoor vendors, cafeterias, catering trucks, caterers, special events promoters, farmers' markets, and retail food vendors. The ordinance would include items made of polystyrene foam such as plates, cups, bowls, trays, and hinged and lidded containers, and would not apply to trays and containers for uncooked meat, fish, poultry, or eggs unless provided for consumption without further preparation, such as for sushi.

For your convenience, two identical Informational Meetings have been scheduled to receive your comments about the proposed ordinance:

Dates and Times: 3:00 p.m., Monday, June 21
7:00 p.m., Tuesday, June 22
Location: Conference Room 2A at City Hall, 777 B Street, Hayward

The Council Sustainability Committee meeting will be held on July 7, where this item will be reviewed and any comments received at the above meetings will be discussed. The meeting will be held in Conference Room 2A at City Hall, 777 B Street, and beginning at 4:30 p.m. The report and the draft ordinance will be available on the City's website at www.hayward-ca.gov/citygov/meetings/csc/ccsc.shtm by close of business on Friday, July 2, 2010, or by calling the Public Works Department at (510) 583-4700 on Tuesday, July 6, 2010. If you are unable to attend any of the meetings but wish to provide comments about the proposed ordinance, you may email your comments to angel.groves@hayward-ca.gov. Please indicate "Styrofoam Ban" in the subject line of your email. You may also mail or fax your comments to the Public Works Department, 777 B Street, Hayward, CA 94541; fax: (510) 583-3610. A summary of this letter in Spanish and Mandarin are on the reverse side of this letter.

Sincerely,

Robert A. Bauman
Public Works Director

Department of Public Works
777 B Street, Hayward,, CA 94541-5007
Tel: 510.583.4700 Fax: 510.583.3610 TDD: 510.247-3340
Printed on 100% Recycled Content Paper

Attachment III

La carta en el revés discute en más detalle la consideración de la Ciudad de Hayward sobre una ordenanza propuesta que prohibiría contenedores de espuma de poliestireno™ utilizado por negocios de alimento de venta en la Ciudad de Hayward. El objetivo de la ordenanza sería de reemplazar contenedores de espuma de poliestireno, que no son reciclable, con plastico recyclable, o contenedores de papel compostable, que son aceptados en programas del reciclaje que la Ciudad actualmente ofrece a residentes y negocios. Para obtener información adicional sobre la ordenanza propuesta y horarios de reuniones que usted puede asistir para discutir la ordenanza propuesta, favor de llamar a (510) 583-4700. Gracias.

信的反面是關於海沃市禁止零售食品業使用泡沫容器提案的詳細建議。該條例的目的是要取代目前不被環保部門回收的聚苯乙烯泡沫容器(保利隆), 代以可回收塑膠,
紙等環保材料容器。如需有關提案的詳細條例及聽政會議時間,請與可以讀取並解釋此信的人分享。謝謝。

Survey of Restaurants: Summary Responses Received

A summary of the comments from primarily non-chain, small- to medium-size restaurants follows:

Best Kept Secret BBQ uses polystyrene foam cups and paper clamshells; most patrons dine in and use containers for leftovers. They have already changed some containers, and will change the others if required.

Buon Appetito uses polystyrene foam containers for take-out and leftovers, and that about 90 percent of the customers eat at the restaurant. The owner estimates that about 400 containers are used monthly and that that cost comprises about 5 percent of total costs.

Carrow's Restaurant uses about 200 polystyrene foam containers weekly for take-out service and leftovers. This restaurant offers a box lunch consisting of a salad in a plastic container, with chips and a main dish in a biodegradable box. The manager explained that the box lunch promotion began about three months ago and that a biodegradable box was selected because it offers a better presentation than polystyrene. The store manager indicated that she is aware that the Carrow's Restaurant in Oakland uses only biodegradable food service ware.

Cecil's Burgers only offers take-out service, uses only polystyrene foam and estimates that it spends about $150 per week for containers. It is a small business and the owner reports that converting to a biodegradable container would not be affordable.

Celia's Mexican Restaurant uses polystyrene foam containers and aluminum foil primarily for leftovers. Most dine in at the 30 tables provided. The owner expressed concern about buying more expensive containers.

Church's Chicken offers take-out service, which comprises a significant part of its business, uses polystyrene foam cups for gravy, cardboard for chicken and paper cups for beverages. The business also has about 15 tables for seating.

Curry Corner uses all polystyrene foam products for its take-out service, which is a significant part of its business, as there is little seating inside. The owner estimates that expenses for polystyrene foam food service ware comprise about 20-30 percent of its monthly expenses. The owner would be reluctant to raise prices because she could not compete with other chain restaurants and intends to email City staff to oppose the proposed ordinance.

El Pastor Taquería uses polystyrene foam cups and clam shells, plastic salsa cups and aluminum foil. The owner reported that about 75 percent of its business is take-out service and that he had tried to use decomposable products.

El Taquito uses polystyrene foam containers for take-out requests. The owner estimates costs of $200-$300 per month to buy containers and indicated that he would use alternate containers if they were comparably priced. If the ordinance is approved, the cost would be passed on to patrons.

El Taquito #2 uses polystyrene foam clamshells and offers indoor seating at 15 tables. The owner estimates that its monthly expenses for these containers are minimal and would pass on the additional costs to customers. The owner indicated that he would like a container with a lining, should the ordinance be adopted, and has begun evaluating alternative containers.

Eon Coffee uses paper cups, small polystyrene foam containers and plastic cups with resin symbol #1. The owner estimates that its take-out and dine-in services are about equal.

Fiesta Mexican Restaurant uses polystyrene foam clamshells and cups, as well as paper containers with an aluminum lining. The owner estimated that 20 percent of his company's business is from take-out and expressed concerns about the additional costs in the current economy.

Good Eats uses polystyrene foam containers for leftovers; most customers dine in using the 30 tables.

Grand Taipei uses paper carton containers and polystyrene foam clamshells. An employee explained that, typically, about one quarter of a box of the polystyrene foam containers is used monthly, mostly for leftovers. A majority of the patrons dine in using the 15 tables provided.

Indian Sweets uses polystyrene foam cups and has about 15 tables inside the business. The owner estimates $200-$300 spent monthly to purchase all plastic food ware, including polystyrene foam cups and all other types of plastic food ware, e.g., trays and cups.

Hong Kong Seafood uses take-out containers made of waxed paper and offers seating at about 15 indoor tables.

Korea House Restaurant located on A Street at Montgomery uses polystyrene foam clamshells for take-out, and spends about $200 monthly on those products.

La Paradis & Patisserie Vietnamese Restaurant and Bakery uses polystyrene foam take-out containers and spends about $150 monthly for those containers. The owner indicated that she is not opposed to the proposed ordinance and is aware that other municipalities have adopted similar ordinances. She has asked that businesses be afforded time to deplete their current inventory to convert to alternative containers.

Lee's Sandwiches uses polystyrene foam containers for dining in and out. An employee indicated his support for the reasons for the change but is hesitant about the amount of the increase.

Main Street Diner, a new restaurant located on Main Street at B, mainly uses paper-based containers.

Naked Fish uses polystyrene foam containers for take-out. As a family business, the owner advised that he couldn't pay more for containers, especially for soups, which are included in every to-go meal. The owner indicated that she would like to make a change to biodegradable containers and has tried alternatives, but they are too expensive.

Pepe's Taquería uses polystyrene foam clamshells and cups, as well as paper cups and bags and aluminum foil for its take-out service and has about 10 indoor tables for seating. The manager estimated costs of about $54 per month for its polystyrene foam products.

Phö Kim uses polystyrene foam and clear clamshells; 10 tables are available for indoor seating. They haven't purchased any containers because they are using current inventory from a previous owner.

Rickshaw Express uses polystyrene foam plates and containers for dine-in and take-out and offers 15 indoor tables for seating. The owner estimates that its cost for polystyrene foam products is about 10 percent of monthly expenses, and that any increase would be passed on to customers. The owner indicated that he would like to start using reusable containers for dine-in customers in lieu of disposable products, and that he would use biodegradable take-out containers if the cost was the same as polystyrene foam containers. The owner plans to attend the July 7 Council Sustainability Committee meeting.

Shark Shack uses polystyrene foam containers because they are cost effective and perform well for hot foods. The owner reported that costs for take-out containers is minimal because most customers dine in, and that he has experienced problems with other paper products that have not performed well as take-out containers.

Taquería Arandas uses polystyrene foam plates, paper bags and aluminum foil for its take-out service and has about 8 indoor tables for seating.

Zorba's Delicatessen uses polystyrene foam containers for hot foods and biodegradable clear cups for cold drinks. The manager indicated that they could not use biodegradable plastics for hot foods and that their cost for packaging relative to other regular expenses is minimal.

Zuckersüss offers yogurt in cups made of sugarcane and uses no polystyrene.

Applebee's, Café Vasiliki, Chef China Bistro, China AA Buffet, Elephant Bar, Golden Mountain Restaurant, Marie Callender's, Mimi's Café, Panda Express, Pick-A-Deli, Ray's Sushi and Sizzler's Steakhouse reported using mostly polystyrene foam containers for take-out services for leftovers.

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING
Hayward City Hall – Conference Room 2A
777 B Street, Hayward, CA 94541-5007

June 2, 2010
4:30 p.m.

MEETING MINUTES

I. Call to Order – Meeting called to order at 4:34 p.m. by Mayor Sweeney.

II. Roll Call

Members:

- Michael Sweeney, Mayor
- Olden Henson, Council Member
- Bill Quirk, Council Member
- Julie McKillop, Planning Commissioner
- Al Mendall, Planning Commissioner
- Marvin Peixoto, Planning Commissioner
- Doug Grandt, Keep Hayward Clean and Green Task Force (KHCG)

Staff:

- Fran David, City Manager
- David Rizk, Development Services Director
- Bob Bauman, Public Works Director
- Glen Martinez, Building Official
- Erik Pearson, Senior Planner
- Amelia Schmale, Sustainability Coordinator
- Katy Ramirez, Administrative Secretary (recorder)

Others:

- Mike Gable, Gable Associates, LLC
- Rosemary Howley, Gabel Associates, LLC
- Kali Steele, Master in Public Policy, Mills College
- Cynthia Chiasson, Realtor
- Bill Espinola, Windermere Real Estate
- Jan Lebby, Realtor, Re/Max Accord
- Lori Kiser, Realtor, Bay East Association of REALTORS®
- Serean Kimmel, Windermere Real Estate
- Ori Skloot, President, Advanced Home Energy
- Otto Catrina, Bay East Association of REALTORS®, Catrina Real Estate
- Craig Ragg, Bay East Association of REALTORS®, Craig Ragg Real Estate
- Larry C. Smith, Real Estate Broker
- David Stark, Bay East Association of REALTORS®
- Carlos Dominguez, Smart Builders, Inc.

III. Public Comments

Jan Lebby, Realtor, Re/Max Accord – Ms. Lebby said that she has lived in Hayward for 32 years and practices her real estate in the Hayward area. She said that one of the common problems that she has been experiencing with her clients is concerns about Hayward schools and that many of them prefer Castro Valley, Pleasanton, or Dublin schools. Ms. Lebby expressed her opinion that Hayward schools are not very good, but that they have wonderful teachers. Ms. Lebby suggested to the Committee that parents take a moment and visit Hayward schools. Ms. Lebby also expressed concerns about vacant properties in Hayward and about the many properties that are not maintained. She said that she would like some help with these situations and would like to see improvements.

Serean Kimmel, Realtor, Windermere Real Estate – Ms. Kimmel said that she has background on economics, energy and natural resources and understands the importance for government leaders to impose policies. Ms. Kimmel expressed her concern for imposing an ordinance that would force homeowners to bring their home to current energy efficient standards and the financial burden it would impose on the buyer and/or seller, and the difficulties this would create for short sale and foreclosed homes.

Lori Kiser, Realtor, Bay East Association of REALTORS® - Ms. Kiser said that she is a Hayward resident, real estate broker, and landlord. She said that she has many concerns about the point-of-sale ordinance that is being proposed, and feels that it would cause a burden, be intrusive, and make jobs for realtors more difficult. Ms. Kiser feels that a RECO is a must for our future, but it should be done in a gentler way and be designed to make it work for all participants.

Bill Espinola, Realtor, Windermere Real Estate –Mr. Espinola said that he has been a landlord in the City of Hayward for over 25 years and has been living in Hayward for over 10 years. Mr. Espinola said that although we are all in favor of energy conservation, he is against the point-of-sale ordinance. He said that selling real estate in Hayward with today's climate is a challenge, and the point-of-sale ordinance would just further complicate those challenges. Mr. Espinola said that he hopes the Committee will take into consideration other fair ways to go about conserving energy.

Cynthia Chiasson, Realtor – Ms. Chiasson said that she is a resident of Hayward and a realtor for the past 18 years; and most of her business sales have been in the Hayward area. Ms. Chiasson said that she is totally against the point-of-sale ordinance, that it makes realtors very nervous, it tends to drive clients to other areas, and the cost of energy efficient upgrades will become a real conflict for the seller and the buyer. Ms. Chiasson said that she is all for energy efficiency if there is a way that it can be done through education and/or incentive programs and not cheat the first time homebuyers.

David Stark, Public Affairs Director for the Bay East Association of REALTORS® - Mr. Stark said that the staff report and other analyses indicate that there is political opposition with point-of-sale requirements. Mr. Stark said there is no evidence that greenhouse gas emissions have been reduced in communities that have adopted residential energy conservation ordinances. Mr. Stark said that in January, he raised concerns about the status of the real estate market in Hayward and what impacts they

may have on the effectiveness of point-of-sale requirements; and feels that those observations have been ignored. Mr. Stark said that he thinks the term paper included in the packets is an interesting study and there are some unique qualities to all the real estate markets identified in that paper, but that, unfortunately, Hayward doesn't share those qualities in terms of demand for homes, sales prices, availability, and transactions. Mr. Stark further stated that, in terms of establishing a foundation for public policy, we really need to look at what would work in Hayward. Mr. Stark said that he was hoping to have a representative from the Berkeley Association of Realtors to talk about her experiences with RECO, but unfortunately, she was not able to make it, but she did provide written comments and he encouraged the Committee to read them.

Mr. Stark said that Bay East Association of Realtors is currently helping Stopwaste.org to design and market their new program. He said it was called the Green Packages Program, but Stopwaste is rejuvenating the marketing approach and name of that program. Mr. Stark said Bay East is excited to be part of the solution when it comes to energy efficiency and that Stopwaste was looking to involve 3,000 plus homes and hoping to partner with the City of Hayward.

Otto Catrina, Bay East Association of REALTORS®, Catrina Real Estate – Mr. Catrina said that he has lived in Hayward since 1960 and his family has owned personal and commercial property in the City of Hayward for over 30 years. Mr. Catrina said that he is a big advocate of green energy efficiency and sits on the California Association of Realtors Committee, and he just returned from a trip to Washington D.C. where he attended a National Association of Realtors meeting. Mr. Catrina said that point-of-sale is not a new topic and realizes that this is an issue that has to be dealt with on a state and national level.

Larry C. Smith, Real Estate Broker – Mr. Smith said that he has lived in Hayward for 34 years and has built homes in the Hayward area. Mr. Smith said that real estate is a struggling industry and feels that a point-of-sale ordinance will affect very few people; however, the impact would be significant for people who are trying to make a living. Mr. Smith asked the Committee and the City of Hayward to rethink point-of-sale carefully and feels there are other alternatives to explore that would have a lasting effect on homeownership.

Craig Ragg, Real Estate Broker, Castro Valley – Mr. Ragg said that he has sold real estate in Hayward for over 30 years, and agrees with many of the comments that have been made today. Mr. Ragg said that he recently checked on the statistics for home sales in Hayward and said that 65 percent of the properties sold were distressed properties, either short-sale or foreclosed properties, and last year it was well over 80 percent for Hayward; the highest in Alameda County for distressed properties. Mr. Ragg said there are many comments about how banks will not finance short-sales and foreclosed properties, and that point-of-sale requirements are difficult to deal with, especially in the market today. Mr. Ragg said that he supports green and understands it; however, he feels that we have to find a way that will work for the industry, the homeowner, and the community.

Ori Skloot, President, Advanced Home Energy – Mr. Skloot said that he has been doing work in Berkeley for 15 years as a home performance contractor and one of the main

things he does is RECO work. Mr. Skloot said that he has never heard of a deal not going through because of RECO. Mr. Skloot said that he is also a broker and sits on a number of Berkeley Association of Realtors and they also have a green committee and part of their green work is to install CFL's (compact fluorescent lamps). Mr. Skloot said that he understands the comments that have been made and doesn't disagree with them, but that everyone should support change and that we have to start somewhere and a point-of-sale ordinance is a good place to start.

Carlos Dominguez, Smart Builders, Inc. – Mr. Dominguez said that he is a local general contractor in Hayward and said that they support this ordinance. Mr. Dominguez said that based on his experience in the field, people would be surprised by the number of homes being sold that do not perform and, that with this ordinance, the homebuyers will know exactly what they are purchasing and therefore, he strongly encouraged this ordinance.

IV. Approval of Minutes of April 7, 2010 – the minutes were approved with the following corrections:

Doug Grandt, Keep Hayward Clean and Green Task Force – requested that wording in a sentence on page 4 be changed from "Committee on Environmental Public Works" to "U.S. Senate Committee on Environment and Public Works," and "during the conversation, he" to "who".

Julie McKillop, Planning Commissioner – requested that a paragraph on page 3 be revised to read, "Planning Commissioner Julie McKillop questioned if this proposal would be attractive to larger energy users. Ms. McKillop supports the idea of focusing on not for profits and feels the funds would be more beneficial to these users. Ms. McKillop also said that she like the concept of large users partnering with local not for profits and using the funds to create energy savings for not for profits."

V. Update on Development of a Residential Energy Conservation Ordinance (RECO)

David Rizk, Development Services Director, said that RECO is one of the actions that was identified in the Climate Action Plan that was adopted by City Council last summer as a fairly high priority. Mr. Rizk briefly summarized the why, the what and when of the RECO, which are identified in the staff report, and said there are a lot of issues that need to be addressed and considered. Mr. Rizk said that staff anticipates that this process is going to take several months before any decisions are made, and that this item will return to the Committee in the fall.

Mr. Rizk introduced Amelia Schmale, Sustainability Coordinator, and indicated that Ms. Schmale will introduce the speakers for today.

Amelia Schmale, Sustainability Coordinator, introduced Kali Steele, who recently graduated from Mills College with a Masters in Public Policy and said that Ms. Steele completed her requirements doing a thesis on a possible RECO for Hayward by researching RECOs throughout the country. Ms. Schmale thanked Ms. Steele for her work and for providing the report in the Committee's packet.

Kali Steele provided a PowerPoint presentation and overview of her report, and noted that she surveyed eight RECOs throughout the country, including Berkeley and San Francisco, which are two of the oldest RECOs in the country that were adopted in the 1980s. Ms. Steele gave an overview of the benefits, statistics, common barriers (i.e. lack of information and awareness), financing, and rebates associated with RECOs, as detailed in her report.

Mike Gable, Gable Associates, LLC, said that his general comment is that RECO is a big subject and there are a lot of moving parts. Mr. Gable proceeded with a PowerPoint presentation and provided an overview of the goals, performance, schedule, cost to homeowners, and state and federal funding programs. Mr. Gable said his recommendation is to keep collecting data; not make any decisions for four or five months; and monitor state and federal funding programs.

Bill Quirk, Council Member, described his own experience with a duct leakage in his house where he had to spend $7,000 to replace the insulation; however, he did not see a significant difference in his utility bill from 2009 and 2010. Council Member Quirk said that he doesn't think with the current housing market that this is the right time to tell people that they have to fix their house before they sell it especially when they are not making money on their homes.

Erik Pearson, Senior Planner, pointed out to the Committee that there was a typo in the letter dated May 26, 2010 from David Stark of the Bay East Association of Realtors for the 2009 home sales, which is actually 1,429 homes.

Doug Grandt, Keep Hayward Clean and Green Task Force, said that we need to understand the cost effectiveness of each implement of what we are doing and said he would like to know more about it. Mr. Grandt said that he doesn't think we should put energy efficiency improvements on the seller and thinks it should go to the buyer, because the buyer is going to benefit and get a return on the investment. Mr. Grandt also said that he thinks we should have a survey, do an audit at point-of-sale, get an inventory of what is out there at the time of sale, and use care rather than enforcement.

Al Mendall, Planning Commissioner, thanked the realtors for attending the meeting and said that he appreciates their perspectives. Mr. Mendall noted that one of the concerns that he is struggling with is if not at point-of-sale, then at what point should energy efficiency improvements be made? Mr. Mendall said that he is having a hard time thinking of an alternative that makes sense and is suggesting that if anyone has other ideas, then please follow-up with an email for consideration by the Committee. Mr. Mendall pointed out that there will be a cost, but the homeowner will save money over time. Mr. Mendall said that he agrees with Mr. Grandt that an audit should be required at point-of-sale or at point of remodel. He said that one measure would be to have audits required based on the age of the home, such that over a 20-year period every home in Hayward would get and audit, and those details would have to be worked out. He indicates that once an audit is completed, then he would like to see a certain amount of improvements made within one to three years, and said that the audit should not be done by the seller in the case of point-of-sale. Mr. Mendall said that the buyer often makes improvements anyway, so as the buyer proceeds with improvements, the upgrades will meet the requirements of the audit. Mr. Mendall said that we are trying to put in place mechanisms that reduce up-front costs. He suggested that an incentive to encourage

improvements would be to refund the cost of the audit after the energy efficiency improvements are made.

Olden Henson, Council Member, said that he agrees with some of the ideas discussed and thinks that they should probably be undertaken. He said that he doesn't know of any other cities that has the amount of distressed properties that Hayward currently has and, if the realtors are correct, then Hayward is either number one or two in Alameda County (vice versa with Oakland) for distressed properties. Mr. Henson said that he likes Mr. Grandt's idea about requiring an audit if that audit is reasonably priced; and he likes Mr. Rizk's idea about using some of the $250,000 federal Energy Efficiency and Conservation Block Grant funds to pay for the audits, which would cover quite a bit. Mr. Henson said that quantifiable data is necessary, that we are going to have to show improvements to people, and that sales would be difficult without data. Mr. Henson said that we can take a lead, but he is very concerned about the current market. He said that he is not sure which triggers would work, perhaps an audit or perhaps in three to five years when the market moves. Mr. Henson said that we are all currently in dire straits financially.

Marvin Peixoto, Planning Commissioner, said that he spoke out against point-of-sale before and his rationale was that improvements can be done voluntarily over the normal course of maintaining and/or repairing your home. Mr. Peixoto said that it bothers him that we are taking this one Hayward issue of trying to become energy efficient and treating it as a stand-alone discreet item without regard to the vision that we have for the City of Hayward, and feels this impacts that vision in a negative way. Mr. Peixoto said that the previous goal was to have 70 percent homeownership, and we are currently at a point where people can afford to purchase a house, and we want that demographic in Hayward. Mr. Peixoto said that this industry is down already; that we talk about Hayward being business-friendly, but this would not be a business-friendly decision. Mr. Peixoto said that now is not the time to requirements at point-of-sale and there is no way that he will support it.

Julie McKillop, Planning Commissioner, said that she thinks we need data and totally opposes point-of-sale at this time. She said that she would like to see a pilot program put into place that would be strictly voluntarily out of incentives; however, she doesn't know if this would be possible or a waste of time. Ms. McKillop said that we have at least five years before the economy and housing market will turn around, so we have that time to collect data and then be ready to go at that time.

Mr. Mendall said that he would like to comment that he doesn't see how it is business unfriendly to encourage or require someone to make changes that would save them money, especially if we can make the cost manageable by paying for the upfront costs such as the audit. Mr. Mendall said that if we can encourage someone to spend $1,000 that will save $500 per year for life, that he thinks this as business-friendly, not business unfriendly.

After more discussion, Mayor Sweeney said that staff will review the comments from the meeting today and we will revisit this item again in September, where staff will update the Committee with any progress, provide data, and determine where we are at the state and federal levels.

Mayor Sweeney said that he thought this was a good discussion and thanked Mr. Gabel, Ms. Steele, staff, and the audience members. He said that it seems there is a lot on the table in terms of options and he is not willing to make any decisions at this point. Mayor Sweeney said that we have a good Climate Action Plan with some reasonable goals, which may need to be revamped based on what the state or federal governments do.

VI. General Announcements and Information Items from Staff

Mr. Grandt announced that October 10, 2010 is "Let's Get to Work Day" to demonstrate local green initiative and said that he plans to build a solar panel at the front steps of Hayward City Hall. Mr. Grandt said if anyone is interested in working with him over the next couple of months to put together a solar panel, get information out to the community, and show them that we are doing our job, to please let him know.

Mr. Rizk said that staff is working on participating in Solar Day 2010 scheduled for June 19th, which is celebrated throughout the world and in the Bay Area. He said they are working out details to piggyback on the Farmer's Market, and will send out more information in a weekly report item.

VII. Committee Referrals and Announcements

None.

VIII. Next Meeting: Wednesday, July 7, 2010

Mr. Mendall said from what he has heard, the recently adopted Fremont ordinance to ban styrofoam appears to be a reasonable platform from which to build and this would be the obvious place for the Committee to begin discussion. Mr. Mendall asked that, if possible, for staff to cut, paste, make minor modifications to the Fremont ordinance, in an effort to make Hayward's ordinance standard with other cities.

IX. Adjournment: Meeting adjourned at 6:28 p.m.

July 7, 2010

The Honorable Michael Sweeney
Mayor, City of Hayward
777 B Street
Hayward, CA 94541-5007

RE: DRAFT POLYSTYRENE FOOD SERVICE WARE ORDINANCE – SUPPORT IF AMENDED

Dear Mayor Sweeney:

The American Chemistry Council (ACC)[1] – a national trade association whose membership includes manufacturers of take-out food service packaging – would like to offer support for an amended draft ordinance if the focus was changed from "polystyrene foam" to a much more equitable and effective materials-neutral policy.

We believe if the City of Hayward is serious about achieving zero waste, the draft ordinance should be amended to focus on **ALL** takeout food packaging, regardless of material type, not just polystyrene. As drafted, this ordinance will simply be a shift from one type of litter to another. Such an amendment avoids arbitrarily creating "winners" and "losers" in the marketplace and instead incentivizes manufacturers to aggressively work with the city, restaurants, waste haulers, recyclers, and others to establish the infrastructure to meet either the "recyclable" or "compostable" criteria.

The draft ordinance will only repeat the experience made by the City of San Francisco when they passed an ordinance to ban polystyrene food service ware. A recently completed litter audit revealed the city's ban of polystyrene food service had not reduced litter and instead found that a 36% reduction in polystyrene litter was **offset by an increase of the same percentage of coated paperboard on an item by item basis**. It is also important to note that neither coated paperboard nor any compostable foodservice "biodegrade" if littered.

Also, several independent studies have demonstrated that banning polystyrene foam could have **significant negative environmental impacts because alternatives such as coated bleached paperboard and "compostables" generate significantly more greenhouse gas emissions, use more energy and generate more solid waste**[1,2,3]. Polystyrene foam food service ware overall is more sustainable than the alternative products that are allowed under this proposed legislation.

For example, as you can see from the attached independent analysis[4] by the City of Seattle, Washington, a polystyrene food service ban would result in the following negative impacts:

- Non-renewable energy would increase 214%
- Greenhouse gas (GHG) emissions would increase 234%
- Ozone would increase 134%
- Acidification would increase by 179%
- Eutrophication would increase by 104%
- Waste generated would increase by 240%

1 Final Peer-Reviewed Report: Life Cycle Inventory of Polystyrene Foam, Bleached Paperboard and Corrugated Paper Foodservice Products, Franklin Associates, Ltd., prepared for Polystyrene Packaging Council, March 2006, http://www.plasticsfoodservicepackaging.org
2 Paper or Styrofoam, A Review of the Environmental Effects of Disposable Cups, University of California at San Diego (UCSD), Dec 2006
3 Life Cycle Inventory of Foam and Coated Paperboard Plates, Peer-Reviewed Final Report, prepared for Pactiv Corporation, Franklin Associates, Ltd., May 2008
4 Alternative to Disposable Shopping Bags and Food Service Items Volume I, prepared for Seattle Public Utilities, January 2008, Herrera Environmental Consultants

It is for these reasons ACC believes a materials-neutral approach makes sense environmentally and economically. ACC and its members would welcome the opportunity to work with the city, local recyclers, composters and the area restaurants to implement a recycling and composting ordinance that avoids unintended environmental consequences, while reducing litter and disposal of all packaging types.

Thank you for the opportunity to share this information. If you have any questions or comments, please do not hesitate to contact me at 916-448-2581 or via email at Ryan_Kenny@americanchemistry.com.

Sincerely,

Ryan Kenny
Manager, State Affairs
American Chemistry Council

cc: Members, Council Sustainability Committee

[1] The Plastics Foodservice Packaging Group (PFPG) represents both suppliers and manufacturers of plastics foodservice products within the ACC.

Alternatives to Disposable Shopping Bags and Food Service Items Volume I

Prepared for

Seattle Public Utilities

January 2008

The shaded fields in the Table ES-3 show those strategies with highest reductions in each of the economic cost and environmental burden categories, compared to the status quo. An ARF on all disposable shopping bags provides the most environmental gains (except for litter), and provides for much higher overall economic gains when compared to all strategies. With an ARF on all bags, consumers experience slightly less costs than with a plastic only ARF (due to an anticipated increase in reusable bags), and the region experiences much more economic cost (due to decreased paper production). Again, the City and retailers may both benefit from revenue under either a plastic only or an all-bag ARF

Disposable Food Service Items

The strategies to address disposable food service items were narrowed to the following five for further life cycle cost/benefit and environmental assessment:

- Enhanced education: Begin a public outreach, education and promotional campaign specifically focused on owners/managers of restaurants, cafes, and coffee shops to encourage replacement of disposable food service items with recyclable or compostable alternatives managed through recycling and food waste composting programs. This would become part of SPU's ongoing reduce-reuse-recycle messaging. Expanded polystyrene (EPS) products would be especially discouraged.

- Enhanced education plus ban on expanded polystyrene (EPS) products: Implementation of mandatory ban on EPS food service items only at all food vendors in Seattle. Ban to be phased in plus a later deadline for all food service items to be compostable or recyclable with restaurants enrolled in composting or recycling programs.

- Enhanced education plus advanced recovery fee (ARF) on expanded polystyrene (EPS) products only. The ARF (likely range, 10 to 25 cents) could be remitted entirely to the City, split by the City and merchants who would use their share to promote reusable alternatives and recycling, or retained entirely by merchants for promotion and administrative costs.

- Enhanced education plus advanced recovery fee (ARF) on all non-compostable and non-recyclable food service ware items. The ARF (likely range, 10 to 25 cents) could be remitted entirely to the City, split by the City and merchants who would use their share to promote reusable alternatives and recycling, or retained entirely by merchants for promotion and administrative costs.

Table ES-4 shows a comparison between all environmental categories and the NPV economic costs and benefits calculated earlier. These results were derived from a case study of hot food "clamshell" type containers and may not apply in other cases. (See page 6-23 for the assumptions regarding vendor and consumer behavior when required to switch products.)

Table ES-4. Economic and environmental costs and benefits normalized to status quo.

	Units	Status Quo	Education	Ban EPS	ARF on EPS	ARF on All Types
NPV	$	100%	119%	169%	176%	199%
Non-Renewable Energy	Megajoules (MJ)	100%	105%	214%	173%	156%
GHG Emissions	kg CO2 eq.	100%	105%	234%	185%	162%
Ozone	g ethylene eq	100%	100%	134%	120%	105%
Acidification	kg SO2 eq.	100%	104%	179%	149%	142%
Eutrophication	kg PO4 eq.	100%	101%	104%	103%	108%
Waste Generated	Tons	100%	105%	240%	189%	162%

Notes: 1. Environmental category units produced summed over a 30-year time frame
2. (NPV) economic costs and benefits over a 30-year time frame
3. Discount rate: 3 percent

Ban on EPS has most negative Greenhouse gas effects.

The shaded fields in Table ES-4 show that all strategies have increases in each of the economic cost and environmental burden categories, compared to the status quo. However, the permanence of plastic in the environment dictates its use be minimized. An ARF on all non-compostable, non-recyclable clamshells reflects the least environmental impacts among bans and ARFs. This is due primarily to the incentive toward compostables (e.g., polylactic acid, PLA), which results in lower impacts than paper and polyethylene terephthalate (PET) in the environmental categories considered. The exception is in eutrophication potential, due to nitrogen and phosphorus runoff in agriculture.

Higher composting rates for compostable products, and the potential increase in organics composted with compostable food service products, would likely provide additional energy and greenhouse gas benefits, and cost savings.

Program Action: Require the use of compostable food containers

Situation Analysis:

Plastic take-out containers are a major component of urban litter. These products are usually polystyrene or expanded polystyrene (such as Styrofoam), and often wind up in the Bay, where they break into small pieces and leach toxins into the water. Take-out food and beverage containers, like Styrofoam cups, are some of the most ubiquitous trash items fouling the Bay and local waterways. Foamed polystyrene and plastic food packaging are also one of the biggest culprits in clogging municipal storm drains. These types of plastics and Styrofoam never biodegrade and will remain with us for thousands of years, harming wildlife and polluting our shores.

Studies have found that styrene, a cancer-causing and neurotoxic component of polystyrene, can leach into food and drink, posing a human health risk. A Danish study that examined the environmental impacts of various packaging materials (in the categories of energy consumption, greenhouse gas effect, and total environmental effect) determined that polystyrene has the second highest impact, behind aluminum.[1] Styrofoam products also pose a health threat to wildlife. At least 162 marine species worldwide have been reported to have consumed polystyrene and other litter. Wildlife that eat polystyrene suffer from loss of appetite, reduced nutrient absorption, and starvation.[2]

Polystyrene food service products have no appreciable recycling market[3]. Companies that claim to accept polystyrene foam for recycling will only accept materials that are free of food residue, which effectively renders polystyrene foam food ware unrecyclable.

Affordable alternatives include paper products with recycled content and re-useable, washable cups and containers. In addition, a wide variety of plastic-like containers made from non-petroleum-based sources like corn starch are available. Combined with an effective commercial compost program, these alternatives can reduce landfill loads and polystyrene and petroleum-based plastic pollution in the Bay and ocean.

State agencies have stressed the need to address urban litter through legislation and municipal ordinances. The California Ocean Protection Council (OPC) proposes a ban on polystyrene food containers as one of the top three priority actions for reducing marine debris.[4] Additionally, under the Water Board's 2009 Municipal Regional Stormwater NPDES Permit (MRP), permitees are repeatedly encouraged to include "any trash reduction ordinances that are being implemented" as part of their trash control measures and best management practices.[5] There have been high levels of public support for ordinances to eliminate polystyrene take-out food ware.

Model Program Case Study: Millbrae, CA:

Recognizing the need to reduce pollution in local waterways and city streets, Millbrae adopted a ban on polystyrene food packaging in January 2008.

What it does: City ordinance requires all restaurants or sellers of take-out food to use only take-out containers that are reusable, biodegradable, compostable or recyclable under current city programs. Styrofoam and polystyrene plastics are prohibited. The ordinance includes cups, lids, straws, clamshells, plates, bowls, and utensils.

How it was implemented: City staff sent two informational reports to the City Council and prepared the city to address industry concerns. The Recycling & Waste Program created postcards and flyers to distribute to businesses and pursued discussions with the Chamber of Commerce prior to the ordinance adoption. The program offers online resources and materials to educate business owners about how to comply (Millbrae Sustainable Food Service Ware Ordinance & Information: http://www.ci.millbrae.ca.us/index.aspx?page=236). Enforcement is complaint-driven. The program enjoys a high rate of participation.

Costs: With estimated figures, for similar program in a city of approximately 150,000 residents:

Staff Time	**Based on**	**Estimated cost**
Staff time for ordinance, outreach and print materials	6 months of .25 FTE staff at $60K annual salary and benefits	$9,000
Translation of outreach materials	5 hours at $100 per hour	$500
Web staff time	2 months of .25 FTE staff at $80K annual salary and benefits	$3,000
City Attorney fees	Where applicable	$0-$2,500
Yearly staff time for complaint-driven enforcement	Mailing letters and making follow-up visits: periodic staff time	$1,500
Expenses	**Based on**	**Estimated cost**
Printing & postage costs for initial outreach	1000 businesses, $1.50 per letter	$1,500
Mailing follow-up and enforcement letters	200 businesses, $1.50 per letter	$300
Estimated Total	**$15,800 - $18,300**	

Contact: Shelly Reider, Environmental Programs Manager, City of Millbrae: (650) 259-2444

Additional Program Information: San Francisco:

We also recommend reviewing the City and County of San Francisco's ordinance, which may have useful findings and other helpful language for cities looking to draft their own legislation: http://www.sfgov.org/site/uploadedfiles/fswr/documents_forms/FSWR_Ordinance295-06.pdf

Enclosures:
Millbrae ordinance and sample outreach materials.

General Considerations:

CEQA: Millbrae's ordinance includes an explanation of their exemption for the ordinance under California Environmental Quality Act (CEQA). This negative declaration clarifies the city's obligations and the impact of the ordinance for legal purposes.

Addressing Industry Opposition: Some plastics manufacturing corporations and their associations surprised cities early on by dispatching lobbyists to oppose these ordinances through letters and at public meetings. Now that cities expect this, it is easier to prepare to answer their arguments. Save The Bay can direct city staff to simple facts that refute plastic industry claims. Please see our Myth vs. Fact sheet for more information.

Recycling as an alternative: A polystyrene ban ordinance work best in coordination with a city's litter abatement, composting and recycling programs. It's important to note that most food service plastics are not easily or affordably recycled, because of the material itself, the lack of a market for recycled polystyrene and especially because food service plastics are soiled. The California Integrated Waste Management Board has said "There is no meaningful recycling of food service polystyrene." (2004 report to the Legislature.) Changing current recycling programs to include recycling food service polystyrene is not recommended.

Helping to achieve municipal environmental goals: Banning the use of polystyrene food containers can contribute to the overall environmental goals of municipalities. For those cities and counties engaging in Environmentally Preferable Purchasing or Extended Producer Responsibility initiatives, a Styrofoam ban is a step toward achieving sustainable material consumption and disposal. Because polystyrene is a major component of water pollution and coastal debris, eliminating its use will help municipalities attain their Zero Waste goals. Finally, a Styrofoam ban would address several components of a Climate Action Plan; eliminating this source of pollution will help protect wetland health, in turn protecting cities against rising sea levels. Reducing or eliminating local Styrofoam production also helps to reduce the amount of greenhouse gases entering the atmosphere.

Public education and outreach on compostable foodware: Some composting operations have noted that people often do not dispose of compostable products properly, putting them in recycling or trash bins rather than compost bins. These mistakes can lead to compostable products becoming littered and ending up in landfills just like their non-compostable counterparts. People also confuse compostable plastic with other plastic foodware. To ensure the effectiveness of a transition to sustainable foodware, cities should engage in targeted efforts to educate the community on the definition of "compostable" and the appropriate way to dispose of these items.

Please contact Save The Bay's Clean Bay Project program staff for additional resources, including sample ordinances, CEQA information, and examples of stakeholder outreach approaches and materials.

Policy Department
510-452-9261 x118
cleanbay@savesfbay.org

Revised 1/28/10

Partial funding for this project comes from the USEPA San Francisco Bay Water Quality Improvement Fund (2009) in collaboration with the San Francisco Estuary Partnership and ABAG.

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[1] California Integrated Waste Management Board (CIWMB). *Use and Disposal of Polystyrene in California* (2004).

[2] City and County of San Francisco, Food Service Waste Reduction Ordinance (Ordinance No 295-06).

[3] California Integrated Waste Management Board (CIWMB). *Use and Disposal of Polystyrene in California* (2004).

[4] Implementation Strategy to Reduce & Prevent Ocean Litter (2008).

[5] MRP Section C.10, pages 84, 86.

ORDINANCE NO. 717

SUSTAINABLE FOOD SERVICE WARE ORDINANCE

AN ORDINANCE TO ADD CHAPTER 6.40 TO THE MILLBRAE MUNICIPAL CODE PROHIBITING THE USE OF POLYSTYRENE FOAM AND SOLID DISPOSABLE FOOD SERVICE WARE AND REQUIRING THE USE OF BIODEGRADABLE, COMPOSTABLE, REUSABLE OR RECYCLABLE FOOD SERVICE WARE BY FOOD VENDORS IN THE CITY

WHEREAS, the City has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, effective ways to reduce the negative environmental impacts of disposable food service ware include reusing or recycling food service ware and using biodegradable or compostable take-out materials made from renewable resources such as paper, corn starch, potato starch, and sugarcane; and

WHEREAS, polystyrene is a common environmental pollutant as well as a non-biodegradable, non-compostable, non-recyclable or non-reusable substance used as food service ware by food vendors operating in the City; and

WHEREAS, there continues to be no substantial recycling of polystyrene food service ware; and

WHEREAS, affordable compostable food service ware products are increasingly becoming available for most food service applications such as cups, plates, and hinged containers and these products are more ecologically sound than polystyrene materials and can be turned into a compost product; and

WHEREAS, residents can get discounted composting bins from the County of San Mateo RecycleWorks Program, which can be used to compost food scraps and biodegradable, compostable, or food soiled paper take out food service ware; and

WHEREAS, natural compost products are used as a very effective soil amendment for farms and gardens that conserves water, prevents erosion and adds to soil "tilth" to reduce the need for applications of fertilizers, herbicides and pesticides, thereby moving towards a healthier zero waste system; and

WHEREAS, disposable food service ware constitutes a portion of the litter in Millbrae's streets, parks and public places which increases City costs; and

WHEREAS, polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them; and

WHEREAS, due to the physical properties of polystyrene, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy"; and

WHEREAS, in the manufacturing process as well as the use and disposal of products, the energy consumption, greenhouse gas effect, and other environmental effects, polystyrene's environmental impacts are rated second highest, according to the California Integrated Waste Management Board; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance that medical evidence and the Food and Drug Administration suggests leaches from polystyrene containers into food and drink and is a suspected carcinogen and neurotoxin which potentially threatens human health and the general public is not typically warned of such potential hazards; and

WHEREAS, due to these concerns, cities began banning polystyrene foam food service ware including several California cities such as Berkeley (1990), Oakland (2007), and San Francisco (2007) where local businesses and several national corporations have successfully replaced it and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

WHEREAS, restricting the use of polystyrene foam and solid disposable food service ware products and replacing non-biodegradable, non-compostable, non-reusable, or non-recyclable food service ware with biodegradable, compostable, reusable, or recyclable food service ware products in Millbrae will further protect the public health and safety of the residents of Millbrae, the natural environment, waterways and wildlife and would advance the City's goal of developing a sustainable City, and

WHEREAS, in light of the foregoing, the City Council desires to institute two specific practices by all food vendors in Millbrae and to regulate said practices in City facilities. The first is that the use of Foam Polystyrene or Solid Polystyrene disposable food service ware will be prohibited. The second is that all disposable food service ware will be required to be biodegradable, compostable, reusable, or recyclable unless there is no available biodegradable, compostable, reusable, or recyclable alternative for a specific application.

THE CITY COUNCIL OF THE CITY OF MILLBRAE HEREBY DOES ORDAIN AS FOLLOWS:

SECTION 1. ADDITION OF CHAPTER 6.40.
Chapter 6.40 hereby is added to the Millbrae Municipal Code to read as follows:

Chapter 6.40

SUSTAINABLE FOOD SERVICE WARE ORDINANCE

Sections:

6.40.010	**Definitions**
6.40.020	**Prohibited Use of Disposable Food Service Ware**
6.40.030	**Required Use of Biodegradable, Compostable, Reusable or Recyclable Food Service Ware**
6.40.040	**Exemptions**
6.40.050	**Regulations; Enforcement**
6.40.060	**Violations and Penalties**

6.40.010 Definitions

"ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended. D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate.

"Biodegradable" means the entire product or package will completely degrade and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

"City Facilities" means any building, structure or vehicles owned or operated by the City of Millbrae, its agent, agencies and departments.

"Compostable" means all materials in the product or package will degrade into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, such that any customer or processor can easily distinguish the ASTM Standard compostable plastic from non-ASTM Specification compostable plastic.

"Customer" means any person obtaining prepared food from a food vendor.

"Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, and other items designed for one-time or non-durable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at food vendors.

"Food Vendor" means any and all sales outlets, stores, shops, vehicles or other places of business located within the City of Millbrae which operate primarily to sell or convey foods or beverages directly to the ultimate consumer, which foods or beverages are predominantly contained, wrapped or held in or on packaging, including both restaurants and retail food vendors. "Restaurant" means any establishment located within the City of Millbrae that sells prepared food for consumption on, near, or off its premises by customers. For the purposes of this chapter the term includes a restaurant operating from a temporary facility, cart, vehicle or mobile unit. "Retail Food Vendor" means any place, other than a restaurant, located within the City of Millbrae where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out prepared food place, industrial feeding establishment, catering kitchen, mobile food preparation unit, commissary, grocery store, public food market, produce stand, food stand, venue, special event, or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided for the public for charge.

"Polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam®," a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS) which are thermoplastic petrochemical materials 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), and in this chapter is referenced as "Foam Polystyrene." Foam Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term "polystyrene" also means and includes clear or solid polystyrene which is also known as "oriented," and referenced in this chapter as "Solid Polystyrene." "Solid Polystyrene" is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.

"Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor's premises within the City of Millbrae. Prepared food may be eaten either on or off the premises, also known as "takeout food."

"Recyclable" means material that can be sorted, cleansed, and reconstituted using Millbrae's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Reusable" means all materials in the product or package will be used more than once in its same form by the customer, food vendor or other reuse programs. Reusable food service ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable also includes durable containers, packages or trays used on-premises or returnable containers brought back to the food vendor.

6.40.020 Prohibited Use of Disposable Food Service Ware

A. Food vendors are prohibited from providing prepared food to customers in Foam Polystyrene or Solid Polystyrene disposable food service ware.

B. No Foam Polystyrene or Solid Polystyrene disposable food service ware shall be used in any City Facilities. No city department or agency will purchase or acquire Foam Polystyrene or Solid Polystyrene disposable food service ware for use at City Facilities.

C. All individuals, entities or organizations using City Facilities for public or private events shall comply with the requirements in this chapter.

6.40.030 Required Use of Biodegradable, Compostable, Reusable or Recyclable Food Service Ware

A. All food vendors using any disposable food service ware will use biodegradable, compostable, reusable or recyclable food service ware. All food vendors are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on-premises. A food vendor may price its products or services to customers in a manner to cover any cost differential.

B. All individuals, entities or organizations that rent or use City Facilities will use biodegradable, compostable, reusable or recyclable food service ware.

6.40.040 Exemptions

A. Foods prepared or packaged outside the City of Millbrae are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City of Millbrae are encouraged to follow the provisions of this chapter.

B. Food vendors will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the City Manager or his/her designee finds that a suitable biodegradable, compostable, reusable or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship. Any person may seek an exemption from the requirements of this chapter by filing a request in writing with the City Manager. The City Manager may waive any specific requirement of this chapter for a period of not more than one year if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. A person granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. The City Manager's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

C. Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

6.40.050 Regulations; Enforcement

A. The City Manager or his/her designee will have primary responsibility for enforcement of this chapter. The City Manager or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to, entering the premises of any food vendor to verify compliance in accordance with applicable law.

B. Anyone violating or failing to comply with any of the requirements of this chapter will be guilty of an infraction pursuant to Chapter 1.05 of the Municipal Code.

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

6.40.060 Violations and Penalties

A. If the City Manager or his/her designee determines that a violation of this chapter occurred, he/she will issue a written warning notice to the food vendor that a violation has occurred.

B. If the food vendor engages in subsequent violations of this chapter, the penalties set forth in Section 1.05.010 of this Municipal Code will apply.

C. Food vendors may request an administrative hearing to adjudicate any penalties issued under this chapter by filing a written request with the City Manager or his/her designee. The hearing procedures set forth in Section 1.05.030 shall be followed. Any determination from the administrative hearing on penalties issued under this chapter will be final and conclusive.

SECTION 2. AMENDMENT OF SECTION 1.05.020

Section 1.05.020 of the Millbrae Municipal Code hereby is amended as follows:

Under Item 1, "Community Development," add Chapter 6.40 as an authorized chapter for the Code Enforcement Officer/Community Preservation Specialist.

Under Item 5, "Public Works," add Chapter 6.40 as an authorized chapter for the following positions: Director of Public Works and Industrial Waste Inspector.

SECTION 3. CEQA DETERMINATION

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061(b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under 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; (3) under Section 15378(a), it is not a project which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment; and (4) under Section 15378(b)(3), it is an action that consists of continuing administrative or maintenance activities in the form of general policy and procedure making.

SECTION 4. EFFECTIVE DATE

This chapter will become effective on January 1st, 2008.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. PUBLICATION

Within five (5) days of the enactment of this Ordinance and fifteen (15) days following its enactment, the City Clerk shall publish a summary of this Ordinance prepared by the City Attorney.

INTRODUCED at a regular meeting of the City Council of the City of Millbrae held on September 25, 2007.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Millbrae held on October 9, 2007 by the following roll call vote:

AYES: Hershman, Holober, Larson, Papan, and Gottschalk

NOES: None

ABSENT: None

MAYOR

ATTEST:

CITY CLERK

Sustainable
Food Service Ware Ordinance

Better for you, your customers, and the environment

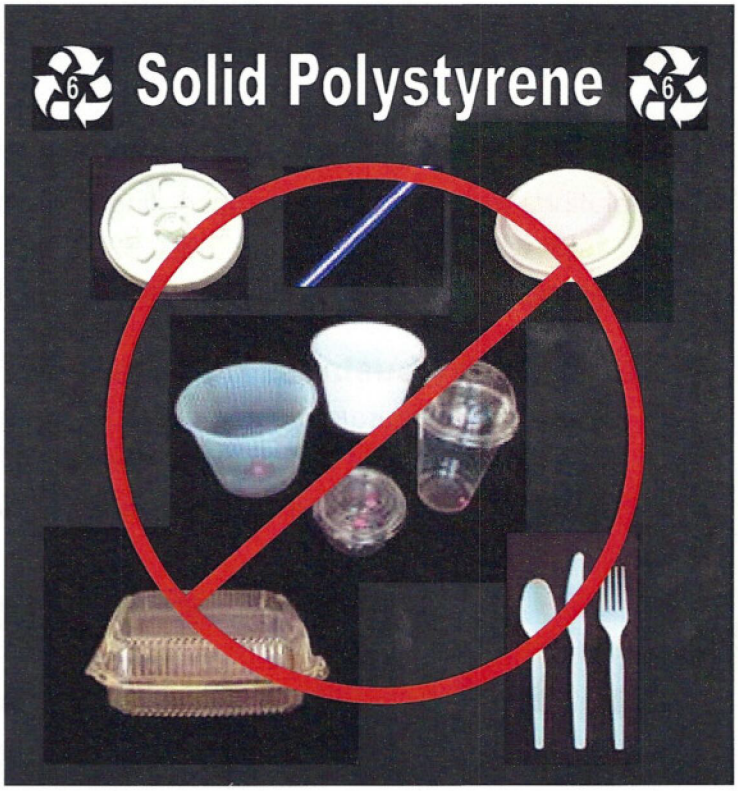
Effective Date January 1st, 2008

Who has to follow the Ordinance?

- All Millbrae food vendors selling prepared food as listed in the Ordinance, including but not limited to restaurants, cafes, delis, fast-food establishments, vendors at fairs, food trucks, and City Facilities.

What does the Ordinance prohibit?

- Foam and solid polystyrene food service ware as listed in the Ordinance, including but not limited to containers, bowls, plates, cups, lids, straws, and utensils with the symbol 6 listed on the products.
- Ask your supplier if you are unsure if your products are polystyrene.



What is wrong with polystyrene food service ware?

- It is not recyclable.
- It is a common item that is littered on streets that ends up in storm drains, on beaches, and in the Bay and Ocean.
- It breaks down into smaller pieces that may be ingested by wildlife resulting in reduced appetite, reduced nutrient absorption, and starvation.
- It contains hazardous chemicals that may leach from polystyrene containers into food and drink and may cause cancer.

What does the Ordinance require?

The use of biodegradable, compostable, reusable, or recyclable food service ware.

- Acceptable Products: Aluminum, plastics (no black) coded with 1, 2, 4 or 5, uncoated or coated paper, cardboard, and plastics made from corn, potatoes, sugar, or other plant based products.
- Please see the separate list of Sustainable Food Service Ware for more details.
- Some examples of acceptable products are shown below:

What are the penalties for non-compliance?

Violations may result in fines according to the Municipal Code:

- 1st = warning, 2nd = $100, 3rd = $200, 4th = $500.
- Enforcement is by the City of Millbrae, not the County Health Inspector.

What can my business do to reduce food service ware costs?

- Allow and encourage customers to bring their own mugs to buy drinks.
- Charge a "take out fee" to cover the cost difference.
- Use reusable dishes and cups instead of disposable ones for "eat-in" customers.

More questions?

Call the Recycling & Waste Prevention Program at 259.2345

www.ci.millbrae.ca.us

100% Post Consumer Recycled Paper

CLEAN WATER ACTION
CALIFORNIA

RECEIVED
AUG 05 2010
Development Services Department

August 3, 2010

Mayor Sweeney
Hayward City Hall
777 B Street
Hayward, CA 94541-5007

Dear Mayor Sweeney,

I am writing to respond to several erroneous points articulated by the American Chemistry Council (ACC) in a letter submitted to the City Council on July 7, 2010. In their letter, the ACC made two major claims for why they would support an amended ordinance, one that removed the language of banning polystyrene. First they claimed that a ban on polystyrene would only shift the type of trash used, and not necessarily cause any reduction in litter. Second they said that by switching to paper or other types of material the environment is actually being more negatively impacted do to the increase in energy and materials needed for production. The ACC's claims cause a distraction from the issue at hand: reducing a significant source of debris in local and Bay waters.

Shifting litter types

The ACC used the SF Litter Audit from 2007 and 2008 to indicate that litter shifted from polystyrene to paper. If this change is a result of the polystyrene ban, which is hard to prove, it's not an indictment of the City's ban on polystyrene food containers. The intent of the City's ban is not to reduce litter completely (even though litter did decrease overall from 2007 to 2008 in San Francisco), rather it is to remove an exponentially more harmful type of litter from the environment.

As discussed in our presentation to the environment committee, polystyrene foam has a much longer and larger impact then other typical litter because of its tendencies to break down into small pellets, become widely dispersed in waterways, and can be mistaken for food by wildlife. A paper cup, however, does not as easily break apart or get blown by the wind so they are more likely to be removed by street sweeping and other trash controls, ending up in landfills as opposed to waterways. The useful evidence from the SF Litter Audit is that polystyrene litter was reduced by 36% after the ordinance was passed; therefore the ordinance was a success. That is a very good reason to vote yes for the proposed City of Hayward ordinance.

Other Environmental Consequences

Another argument that the ACC makes is that "banning polystyrene foam could have significant negative environmental impacts because alternatives such as coated bleached paperboard and 'compostables' generate significantly more greenhouse gas emissions, use more energy and

generate more solid waste." Again, the ACC tries to shift the debate away from the actual intent of the proposed ordinance. The intent of the polystyrene ordinance is not for resource conservation; rather it is to get rid of one bad actor that is wreaking havoc in the environment.

We agree with the ACC that it "is important to reduce litter and disposable packaging types" and our organization believes strongly in resource conservation. However it is dangerous to get into a debate using currently available life cycle analysis. The cited lifecycle studies refer to only foam vs. paper plate and only focus on energy and greenhouse gas emissions. Another study on polystyrene versus paper, not cited by the ACC, found that polystyrene production consumes 90-% more resources, produces 30% more NOx and Sox, and contributes 15% more emissions than paper.[1] Increasingly, debates about packaging focus on life cycle assessment and analysis. This is a dangerous path since many of these studies are funded by the industry and are therefore by their very nature biased. To have an educated discussion about the complex topic of sustainable packaging, less biased analysis would need to be commissioned.

This ordinance does not attempt to "fix" the total environmental impacts of disposable food packaging. Rather, it deals with a very serious problem that is plaguing many communities - foam packaging that contributes more readily to the street litter and plastic marine pollution problems than any other material type.

In conclusion, we agree with the ACC that a long-term goal for our jurisdictions should be to phase out the need for one time use packaging and materials. In the mean time, we must address the most egregious offenders of the environment, and polystyrene is just that. With its tendency to easily become litter, and since it releases dangerous styrene into consumer food and beverages, it is clear that banning polystyrene is the correct thing to do.

Sincerely,

Aryeh Canter
Intern

Miriam Gordon
California Director

CC: Katy Ramirez, City of Hayward
Council Member Olden Henson
Council Member Barbara Halliday
Council Member Bill Quirk
Council Member Francisco Zermeno
Council Member Marvin Peixoto
Council Member Mark Salinas
Allison Chan, Save the Bay

[1] R. Tan, H. Koo, "Life Cycle Assessment of EPS and CPB inserts: design considerations and end of life scenarios," *Journal of Environmental Management*, 74, 195-205, 2004.

CLEAN WATER ACTION

CALIFORNIA

Facts about Styrofoam® Litter (Expanded Polystyrene Foam).

"Polystyrene Foam" in the Marine Environment

- Expanded polystyrene foam (EPS), (commonly known as Styrofoam®) is pervasive in the marine environment. Like most plastics, polystyrene is lightweight and floats. Wind carries it through storm drains out to the ocean.[1]
- Exposure to sunlight and wind helps break EPS trash into smaller and smaller pieces.
- Marine animals easily mistake polystyrene for food.[2]
- The composition of conventional petroleum-based plastics as durable polymers means they will never disappear in the environment.[3]
- Roughly 80 percent of marine debris originates from land-based sources. Plastics comprise 90 percent of floating marine debris.[4]
- EPS is the second most abundant form of beach debris in California.[5]
- Styrene measured in sand and coastal waters off Japan comes in part from decomposition of polystyrene (PS) litter, which comprises 85% of beach debris measured in Japan.[6]

Local jurisdictions spend millions cleaning litter[7]

- Caltrans spends approximately $60 million a year to remove litter and debris from roadsides and highways.
- The County of Los Angeles (L.A.) spends $18 million annually on litter cleanup and education.
- Some coastal communities spend considerable funds on beach cleaning. For example, L.A. County collects over 4,000 tons of trash annually on its beaches. In 1994, it cost the County over $4 million to clean 31 miles of beaches.
- Since 2001, Southern California cities have spent in excess of $1.7 billion cleaning trash out of storm drain systems leading to the L.A. River and Ballona Creek in order to comply with stormwater regulations.

PS Litter – Measureable Reductions from PS Foodware Ban

- One year after implementation of the San Francisco ordinance that prohibits the use of EPS foodware, San Francisco's litter audit showed a 36% decrease in EPS litter.[8]
- Unfortunately, most jurisdictions do not conduct assessments of how much litter is reduced as a result of bans implemented.

PS Food Packaging is Not Recyclable

- According to the plastics industry (American Chemistry Council), PS food packaging is typically not clean enough to be recycled and it is economically not realistic to recycle it.[9]
- EPS has a very low recycling rate. According to a 2004 study by the California Integrated Waste Management Board, of the 377,580 tons of polystyrene produced in the state, only 0.8% is recycled. Of that, only 0.2% (310 tons) of polystyrene food service packaging is recycled.[10]

Alternatives to Polystyrene for Food Packaging

- Reusable products are always preferable to disposable ones. They have less environmental impact and in the long run cost consumers and retailers less money.
- Better disposable alternatives include recycled paper and in communities where organic waste is collected for composting, compostable / biodegradable plastics.
- Compostable and biodegradable plastic does not break down in the marine environment.
- Compostable plastics are designed to degrade only in compost. Therefore, compostable plastic packaging should only be used in jurisdictions that collect organic waste curbside for composting. These products must meet ASTM standards and should be labeled as compostable to avoid contamination of materials collected for recycling.

Local Jurisdictions Responding with Prohibitions on PS Foodware

- Over 33 cities and counties in California have banned polystyrene food packaging.
- In the City of Santa Monica, for example, local businesses have successfully switched to more sustainable alternatives.[11]
- The City of San Francisco has had only one complaint of economic hardship from any of the 4,000 businesses prohibited from using EPS- that company had a backlog of PS inventory and was given more time to come into compliance.

CLEAN WATER ACTION

CALIFORNIA

Human Health Effects from PS and Styrene

- EPS is made using the monomer, Styrene is a lab animal carcinogen and probable human carcinogen, according to the International Agency Research on Carcinogens.[12] US EPA and the US National Toxicology Program are currently evaluating the listing of styrene as carcinogen.
- Over 13 billion pounds of Styrene were produced in the US in 2006, 65% of it was used in manufacturing polystyrene.
- Styrene can migrate from polystyrene containers into food and beverages when heated, or in contact with fatty or acidic foods.[13]
- Styrene residues are found in 100% of all samples of human fat tissue.[14]
- The Food and Drug Administration has determined that the styrene concentration in bottled drinking water should not exceed 0.1 part per million (ppm).[15] The U.S. EPA drinking water standard is 1 ppm.
- Styrene can be found in air, water, and soil after release from the manufacture, use, and disposal of styrene-based products.[16]
- Styrene exposure increases the risk of leukemia and lymphoma and is a neurotoxin.[17]
- Workers in polystyrene products manufacturing are exposed to many harmful chemicals, including Styrene, Toluene, Xylene, Acetone, Methyl Chloride, and Methyl Ketone.[18]
- Occupational exposure to Styrene increases risk of lymphoma, leukemia, lung tumors, pancreatic cancer, urinary bladder cancer, prostate cancer, and colorectal cancer. High rates of neurotoxicological effects have been reported in workers, including slowed reaction time, effects on balance and spatial orientation, hearing problems, concentration problems, and decreased color discrimination. Some studies also show significant decrease in sperm count and increased sperm abnormality.[19]

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[1] California Coastal Commission / Miriam Gordon (2006) "Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action from The Plastic Debris Project," at 2 and 15 www.plasticdebris.org

[2] J.G.B. Derraik, "The pollution of the marine environment by plastic debris: a review" *Marine Pollution Bulletin* 44 (2002): 843; Gregory, M.R., Ryan, P.G."Pelagic plastics and other seaborne persistent synthetic debris: a review of Southern Hemisphere perspectives" in Coe, J.M. Rogers, D.B. (Eds.), *MarineDebris—Sources, Impacts and Solutions,* (1997) Springer-Verlag, New York, pp. 4 9-66.

[3] Coastal Commission at 22; H. Kanehiro, T. Tokai, K. Matuda, "Marine litter composition and distribution on the seabed of Tokyo Bay," *Fisheries Engineering* 31 (1995): 1 95-199.

[4] U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Public and Constituent Affairs, (1999) "Turning to the Sea: America's Ocean Future;" United Nations Environment Programme (1995) "Global Programme of Action for the Protection of the Marine Environment from Land-based Activities." Note by the secretariat, UNEP (OCA) /LBA/IG.2/7.

[5] S. Moore *et al.*, (2001) "Composition and Distribution of Beach Debris in Orange County, California," Marine Pollution Bulletin 42.3: 241-245. Plastic pellets used to manufacture plastic products was the most abundant type of debris.

[6] Saido, K. et al, Presentation at 238th ACS National Meeting, August 22-26,2009, Washington DC Environ.Divn. "New contamination derived from marine debris plastics."

[7] Cost information cited from the following: Gordon Environmental Consulting and Ocean Protection Council,t "An Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter," November 2008, p. 4

[8] City of San Francisco Streets Litter Re-Audit 2008. Available at: http://sfenvironment.org/downloads/library/2008_litter_audit.pdf.

[9] Erlich, R. "Economic Realities of Recycling," http://www.americanchemistry.com/s_plastics/sec_plan.asp?CID=1436&DID=5220#

[10] California Integrated Waste Management Board (December 2004),"Use and Disposal of Polystyrene in California: A Report to the California Legislature," Table 4, Page 14.

[11] City of Santa Monica Environmental Programs Division, "Container Successes," <http://www.smgov.net/epd/business/container_successes.htm> (Accessed 7/21/08).

[12] International Agency for Research on Cancer (IARC). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42. Supplement 7. World Health Organization. Lyon, France. 1987.

[13] Agency for Toxic Substances & Disease Registry, U.S. Department of Health and Human Services: *ToxFAQs for Styrene*, September 2007: <http://www.atsdr.cdc.gov/tfacts53.pdf>; International Agency for Research on Cancer, "Overall Evaluations of Carcinogenicity to Humans," <http://monographs.iarc.fr/ENG/Classification/crthalllist.php>. J.L. O'Donoghue, *Neurotoxicity of Industrial and Commercial Chemicals:* Vol. 2, CRC Press, Inc., Boca Raton, Florida, 1985, pages 127-137.

[14] *Styrene, CASRN: 100-42-5 (Human Health Effects).* Toxnet Hazardous Substances Data Bank, National Library of Medicine, Revised November 1, 1994.

[15] Ibid.

[16] ASTDR (see note 7)

[17] US EPA, Air Toxics Website, http://www.epa.gov/ttn/atw/hlthef/styrene.html#ref3; see also note 7.

[18] CASRN, note 7.

[19] CASRN, note 7.

HAYWARD
CHAMBER *of*
COMMERCE
Hayward on the Move!

Sept. 23, 2010

Mayor Michael Sweeney
Hayward City Hall
Hayward, CA, 94541

Mayor Sweeney,

The board of directors of the Hayward Chamber of Commerce and its Government Relations Council have had the opportunity to review and discuss the city's proposed ordinance regarding polystyrene packaging and containers. Both groups have voted to ask that the City Council delay consideration of this issue until a time when the economic result will be less severe and more information is available about the environmental impact of such an ordinance in other municipalities.

The chamber's Government Relations Council has heard presentations from the City of Hayward solid waste manager Vera Dahle-Lacaze and Ryan Kenny, western regional manager for the American Chemistry Council, representing the Polystyrene Food Services Manufacturers. We understand Mr. Kenny has also communicated his organization's concerns with you.

While we have not had the opportunity to poll all of our members who will be affected by this proposed ordinance – including our more than 50 restaurant members – it is apparent to the chamber that the results of such bans are not necessarily better for the environment and certainly pose additional costs on businesses. For example, one company that is among Hayward's largest employers estimates an annual increase of up to $140,000 to implement the proposed ordinance. We also have heard these ordinances do little to address a city's litter problems, and that it requires up to 50 percent more energy to produce alternatives such as plastic-coated paper cups.

Given these issues, we ask that the city defer consideration of this issue or, at the very least, consider a significant delay in any implementation to a point when the Hayward economic climate is in a recovery mode so that local firms can absorb the additional cost associated with this proposal.

Sincerely,

Ronald Peck
Chairman of the Board
Hayward Chamber of Commerce

22561 Main Street, Hayward, CA 94541 Tel (510)537-2734 Fax (510)537-2730 hayward.org