



Memorandum

TO: TRANSPORTATION &
ENVIRONMENT COMMITTEE

FROM: Councilmember Sam Liccardo

SUBJECT: SEE BELOW

DATE: November 30, 2012

APPROVE

11-30-2012

SUBJECT: REPORT ON EXPANDED POLYSTYRENE RESEARCH (EPS) AND ALTERNATIVES ANALYSIS AND UPDATE ON THE BRING YOUR OWN BAG ORDINANCE IMPLEMENTATION

RECOMMENDATION

Accept staff recommendations, with the following modification:

1. Direct staff to:

- a. return to Council with a draft ordinance to phase-out the use of Expanded Polystyrene (EPS) foam food service ware at restaurants and food service establishments (restaurants) in San Jose by October 1, 2013 for large restaurants, and by July 1, 2014 for all restaurant establishments.
- b. Prepare a CEQA study for the proposed phase-out ordinance, but include the entire county within the study, to provide an impetus for regional adoption of San Jose's approach.

BACKGROUND

Faced with widespread concerns about the potential costs to businesses from a proposed compostable foodware mandate, Environmental Services staff has responded by offering a more flexible approach. Under the revised proposal, restaurants can eliminate their use of environmentally harmful expanded polystyrene (EPS) without significantly increasing their operating costs.

With the benefit of staff's very thorough work, it is time again for San Jose to exert its environmental leadership by becoming the largest city in the United States to halt the use of EPS foodware. We can do so confidently because the staff report, the economic analysis by EPS, and the market study by Cascadia Consulting, clarifies the factual landscape to make the argument for moving forward compelling. For example, we now know that:

- Cost impacts on businesses are likely to be minimal, because take-out food packaging represents only 0.34% of sales revenue for most San Jose restaurants (classified as "full-service" restaurants), and 1.57% of sales of "limited service" restaurants. (Attachment C, p.10)

- Within that very narrow window of cost impact, the cost differential of moving to a non-EPS food packaging lies within \$0.01 to \$0.03 for every item of standard polystyrene, and in several cases, the alternative *actually cost less* than the EPS foodware. (Attachment D, Exhibits 6-10)
- Dwarfing these relatively miniscule cost impacts are the enormous fluctuations that the restaurants routinely face with other cost variables, such as food commodity prices. (Attachment D, pp. 12-13) ;
- There are no practical means to recycle EPS foodware. Contrary to some plastics industry claims, even in those cities that allow for EPS to be collected in curbside recycling bins, most material recycling facilities (MRFs) do not process the EPS, simply sending it to the landfill. Not a single major recycler in the South Bay accepts food-contaminated EPS for processing. (Cf. Staff Report, pp.11-12)
- Storm sewer capture devices in San Jose amply demonstrate the ubiquity of EPS in our storm water and creeks, revealing that 10.8% of the captured trash consisted of EPS, while a previous Caltrans study revealed EPS comprising 15% of trash on Caltrans roadways.
- Bans do work. As a result of San Jose's successful implementation of a plastic bag ban, we have seen dramatic reductions in the plastic bag's share of trash found in storm drains (a 89% drop over previous trash characterization studies), creeks and rivers (a 60% drop), and city streets (59%). While alternative foodware will also result in litter, we can be assured that it will be substantially reduced because (a) many residents will choose to recycle or compost it, and (b) in many cases, it will biodegrade at a far higher rate.

Due to the unique Brown Act challenges presented by the short-handed T & E committee, I cannot discuss any proposed modifications to staff's direction with my colleagues in advance of the meeting, so I intend to provide some advance notice of recommended changes through this memorandum.

First, I urge an acceleration in the pace of implementation. An EPS ban has been before this council, and in the San Jose media, for over two years. In 2011, ESD staff held seven public meetings, inviting thousands of restaurant industry stakeholders. Staff personally visited some 350 small restaurants in San Jose to engage with business owners and managers. There is no reason why the staggered implementation process for large and small restaurants cannot occur in parallel, that is, informing small restaurants of their pending obligations while the large restaurants actually phase out their use of EPS products.

Many larger restaurants—particularly chains—have already grappled with the task of finding EPS alternatives, because many of the 58 California cities that have already banned polystyrene foodware lie immediately around San Jose, including San Francisco, Oakland, and Palo Alto.

Moreover, we have the successful implementation of the "Bring Your Own Bag" outreach effort to look to for guidance, and that involved a far more substantial amount of outreach, since the bag ban targeted consumer behavior, not merely the purchasing decisions of some 2,000 restauranteurs. I am confident that we can perform the necessary outreach, and implement a phase-out among the larger

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ITEM: D(2)

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establishments in a little over 6 months, and the remainder within a year and a half, as I've suggested above.

Second, I urge a County-wide EIR, to provide environmental clearance for our neighboring cities in the County, to facilitate a more uniform regional approach to environmental regulation. Providing regional environmental clearance for the single-use bag ban has provided smaller cities such as Sunnyvale and Cupertino to move forward, to the mutual benefit of all cities. We should continue to lead this region in environmental stewardship, and we should provide a consistent policy across the region to avoid confusion and conflicting expectations in the marketplace.

It's long past time for San Jose to move forward to remove this contaminant from our creeks, Bay, and streets.