



CITY OF BEVERLY HILLS
PUBLIC WORKS DEPARTMENT
MEMORANDUM

TO: Public Works Commission

FROM: Josette Descalzo, Environmental Compliance and Sustainability Programs Manager
Robert Welch PE, Utility General Manager

DATE: February 9, 2023

SUBJECT: Proposed Ordinance Prohibiting the Use, Sale and Distribution of Polystyrene (Styrofoam) Foodware and Coolers

ATTACHMENT: 1. Draft Ordinance

RECOMMENDATION

Staff is recommending that the Public Works Commission recommend to move forward the Polystyrene (Styrofoam) Ordinance for City Council consideration.

DISCUSSION

During the Public Works Commission meeting on January 12, 2023, staff presented an update on the Proposed Ordinance Prohibiting the Use, Sale and Distribution of Single-Use Plastic and Polystyrene (Styrofoam) Goods and Materials. During the meeting, staff relayed the results of the community outreach efforts, which are summarized below:

1. Low participation despite direct contact with affected stakeholders.
2. The Beverly Hills Chamber of Commerce Government Affairs Committee did not support the proposed ordinance due to potential burden to the business community due to additional pending cost and proposed a voluntary participation through a City-led green business program.

The Commission acknowledged the business community's feedback and directed staff on a more focused approach starting with prohibiting the use, sale, and distribution of Polystyrene (commonly known as Styrofoam) goods and materials in Food Service Establishments (FSE). A Food Service Establishment is defined as any establishment including, but not limited to, grocery stores, restaurants, coffee shops, pharmacies, liquor stores, or "mini-marts," that sell food or beverages, including, but not limited to, temporary facilities, carts, vehicles, or mobile units. The Commission shared the urgency to regulate Polystyrene due to the imminent environmental consequences and public health issues related to the use of Polystyrene in goods. In addition, the Commission also asked staff to incentivize early adopters of the ordinance prior to the effective date by providing alternative materials for serving, consuming, or transporting foods to businesses to evaluate for use and bring back a draft ordinance for consideration during the next meeting.

Staff is presenting a proposed draft ordinance for the Commission's consideration to recommend for City Council adoption. The draft ordinance is subject to the City Attorney's final

review and approval. The proposed draft ordinance adopted elements of other cities' ordinances as well as suggestions from the Surf Rider Foundation's draft ordinance.

The Polystyrene Ordinance is based on the following framework:

1. Prohibiting the use, sale and distribution of Polystyrene (Styrofoam) goods and materials in Food Service Establishments.
2. The list of goods and materials that are prohibited for distribution or sale includes the following:
 - a. Disposable Foodware means single-use disposable products used for serving, consuming or transporting prepared food or raw food or beverages, including, but not limited to, plates, bowls, trays, cups or drink ware, or any container in or on which prepared food or raw food or beverages are placed or packaged for consumption.
 - b. Polystyrene Cooler means any cooler or ice chest made of polystyrene foam (expanded polystyrene), where such foam is not fully encased in another more durable material.
3. Stakeholders:
 - a. Food Service Establishments including, but not limited to, restaurants, mobile food trucks, beverage stores, cafés, coffee and tea shops, groceries and pharmacies.
 - b. The City of Beverly Hills, which includes City Contractors and City-Sponsored Events. A City Contractor is any person that enters into an agreement with the City to furnish products or services to or for the City. City-Sponsored Events are any events, activities or meetings organized or sponsored, in whole or in part, by the City or any City department.
4. Exemptions and Extensions:
 - a. Food packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
 - b. Materials and goods that are exempted by the draft ordinance include:
 - i. Coolers and ice chests as defined in the ordinance.
 - ii. Food or beverages brought by individuals for personal consumption to City facilities, including, but not limited to, City parks, provided the City facility is being used for individual recreation or similar purposes.
 - c. Extensions are issued at the discretion of the City Manager. Extensions are granted for stakeholders who prove reasonable hardships to comply with the ordinance such as the lack of an available alternative to the requirement of the ordinance.
 - d. Affected Food Service Establishments are allowed to file an extension to comply with the ordinance. Extension may be granted with or without condition up to one year, upon finding that compliance would create an undue hardship.
5. Enforcement and Penalties:
 - a. Noncompliant stakeholders will be issued a written Notice of Violation.
 - b. Continuous violations will result in the of the following administrative fines:

- i. \$100 for a first violation
 - ii. \$200 for a second violation
 - iii. \$500 for a third violation and subsequent violations
6. Effective Date: Staff is proposing to implement a phased-in implementation timeline based-on the feedback received from the business community and also examples from other municipalities. Below are the phased-in effective dates:
 - a. City, City Contractor and City-sponsored events: 6-months after adoption
 - b. Food Service Establishments: 1-year after adoption

The City plans to lead in efforts to prohibit Polystyrene products with this initiative and would impose the shortest implementation timeframe. The 1-year adoption timeline will allow Food Service Establishments to adjust their inventory and reconsider purchasing contractors. It will also allow grocery stores to work with their corporate headquarters to replace their Polystyrene Trays to package raw food and discontinue the sale of Polystyrene foodware and coolers. This timeline is similar to other cities like Redondo Beach, Manhattan Beach and Culver City who have given stakeholders between 10-months to 1-year of prohibiting the use and sale of Polystyrene materials.

Additional Considerations: Retail Component and Incentives

The Commission should also consider the retail component of the proposed ordinance. The proposed ordinance's prohibition on the sale of food and beverage polystyrene containers will impact small businesses.

During a recent business task force meeting, small local businesses have indicated this will impact their business and customers, especially those that have mobility issues. Small business owners indicate that this ordinance will drive customers to purchase polystyrene foodware outside the city. Small businesses have thus asked the City to reevaluate the retail component of the ordinance.

The Commission also directed staff to consider incentivizing early ordinance adopters by providing an alternative material (i.e. compostable material) supply to businesses. Based on legal's opinion, the City will be able to implement an incentive program for early adopters. The early adopters program will be forthcoming.

While the incentive program is being developed, the City has a list of supplier businesses that they can start utilizing to replace polystyrene products.

NEXT STEPS

If the Commission approves the proposed ordinance as drafted or modified, staff will need to perform additional outreach efforts to the Food Service Establishment community starting with the Chamber of Commerce during the February Government Affairs Committee meeting. Staff will launch direct outreach efforts to these businesses through flyers and will subsequently plan a virtual workshop in March or April in the event that they receive strong feedback.