



The City of San Diego

Staff Report

DATE ISSUED: October 2, 2022

TO: City Council

FROM: Environmental Services Department

SUBJECT: Single Use Plastic Reduction Ordinance: Final Environmental Impact Report and Ordinance Recommendations

Primary Contact: Matthew Cleary, Assistant Director Phone: (858) 573-1214

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Council District(s): Citywide

OVERVIEW:

In January 2019, City Council passed the Single Use Plastic Reduction ordinance to restrict the distribution of polystyrene foam products and plastic utensils in the City of San Diego. Enforcement of the ordinance was stayed shortly thereafter due to a lawsuit. In the settlement agreement the City agreed to prepare an Environmental Impact Report under the California Environmental Quality Act. The Final Environmental Impact Report is being presented for certification along with a request to repeal the original ordinance and then re-adopt the Single Use Plastic Reduction Ordinance.

PROPOSED ACTIONS:

- 1) Adopt a resolution certifying that the information contained in the Final Program Environmental Impact Report (PEIR) for the City of San Diego Single Use Plastic Reduction Ordinance (SCH No. 2020120099) has been prepared in accordance with the California Environmental Quality Act (CEQA), and that said PEIR reflects the independent judgement of the City of San Diego as Lead Agency. Stating for the record that the Final PEIR has been reviewed and considered prior to approving the project, certifying the Final EIR, and adopting the Findings and Statement of Overriding Considerations;
- 2) Direct the City Clerk to file a Notice of Determination;
- 3) Repeal the San Diego Municipal Code amendments passed in Ordinance 21030 on January 24, 2019, related to the restriction of distribution of polystyrene foam products and plastic utensils;
- 4) Re-adopt the Single Use Plastic Reduction Ordinance.

DISCUSSION OF ITEM:

Polystyrene foam, commonly known as "Styrofoam" is a threat to the environment in San Diego as litter in our canyons, streets, waterways, and beaches. Polystyrene foam blows in the wind and floats on water, where it can be ingested by birds, fish, and other organisms. The polystyrene foam that does not

become litter, but is put in trash or recycling bins, then becomes a nuisance at the landfill or recycling center, as it easily breaks up, blows around, and becomes litter at and around the landfill or becomes contamination in other recycling streams. Markets for recycling of polystyrene foam are expensive, difficult to find, and the process is energy intensive and costly. Finally, polystyrene foam does not biodegrade but photodegrades, meaning it breaks up into smaller and smaller pieces, persisting in the environment for many years.

In 2018, City Council proposed the Single Use Plastic Reduction Ordinance which was subsequently passed on January 24, 2019. The ordinance amended the San Diego Municipal Code to restrict the use of polystyrene foam products and single-use plastic utensils throughout the City.

Before the main provisions of the ordinance went into effect, a lawsuit brought forward by representatives of three small local restaurants, the California Restaurant Association, and Dart Container Corporation of California resulted in a settlement agreement to stay enforcement of the ordinance pending preparation of an Environmental Impact Report per the California Environmental Quality Act. The Final Environmental Impact Report has been completed and adoption of a Resolution to certify the Environmental Impact Report is one of the requested actions for this item.

The Single Use Plastic Reduction Ordinance is an important part of the City's duty to protect the environment. The City's Climate Action Plan - Strategy 4, Circular Economy and Clean Communities, Measure 4.1, Changes to the Waste Stream - calls for approving and implementing the City's Polystyrene Foam and Single Use Plastics Ordinance. Additionally, the ordinance will support the City's Zero Waste Plan goals to reduce landfill disposal by 90% by 2035 and implement local policies that encourage up-stream responsibility for waste produced by manufacturers, consumers, and distributors. This ordinance will also support the City's mandated organics recycling goals by helping to prevent polystyrene, a potential contaminant in the organics stream, from accidentally being placed in consumers' organics recycling bins.

Restricting polystyrene foam in San Diego would put the City in the company of 127 other local jurisdictions in California that have passed ordinances restricting the sale or use of polystyrene foam. Additionally, the California state legislature recently passed two bills related to single-use plastics. First, AB 1276 restricts the distribution of single-use utensils and condiment packets by food facilities. Secondly, SB 54 will, among other things, restrict the distribution of polystyrene foam in the state starting on January 1, 2025, if the recycling rate for polystyrene foam in California does not exceed 25% at that time. San Diego's ordinance, if passed, will complement these state waste reduction efforts.

The proposed ordinance, which mirrors the 2019 ordinance includes the following:

- Restricts the sale and distribution of food service ware, food trays, and egg cartons made in whole or in part from polystyrene foam. This includes bowls, plates, trays, cups, lids and other similar items designed for one-time use for prepared foods, including containers for dine-in, takeout food and leftovers.
- Restricts the distribution of the following if made in whole or part from polystyrene foam unless wholly encapsulated within another material:
 - o Coolers, ice chests, or similar containers
 - o Pool or beach toys
 - o Dock floats, mooring buoys, or anchor or navigation markers
- States that food vendors may only offer these items upon request:
 - o Utensils made from plastic or bio-plastic for take-out
 - o Straws made from plastic or bio-plastic (take out or dine in)

- Restricts City Departments from purchasing or acquiring food service ware made, in whole or part, from polystyrene foam.

The proposed Single Use Plastic Reduction Ordinance would go into effect 90 days after final passage. Many restaurants and other venues have already switched from polystyrene foam to alternative products due to environmental concerns and customer demand.

Some alternatives to polystyrene foam are more expensive. To assist small businesses in making a successful transition, there would be a 12-month exemption for entities with less than \$500,000 in annual income. There would also be three types of waivers available:

1) Feasibility-based hardship - in the case that no reasonably feasible alternative to polystyrene foam exists

2) Financial hardship - for entities with income of less than \$500,000 per year and for which there is no suitable and reasonably affordable alternative product available

3) Contractual requirement - one-year waiver available for entities with a contract to purchase non-compliant material that was in place before the effective date of the ordinance

ESD will provide technical assistance and outreach materials to businesses affected by the ordinance, including guidance on preferred alternatives to polystyrene foam. Preferred alternative products are those that reduce the amount of waste going to the landfill. Reusable and recyclable service ware, made from 100% post-consumer content such as clay-coated paper, metal, or recyclable plastics, are the most preferred type of alternative products because they support a circular economy.

ESD is committed to informing businesses about the ordinance and how to comply. The City's web page and social media pages will inform the public of the new requirements, as will a planned media release. ESD will also share information with community groups and trade associations such as: City Council Offices, Town Councils, Business Improvement Districts, the San Diego Green Business Network, grocery and restaurant associations, and environmental groups. Additionally, ESD and our contractors will provide information and technical assistance to businesses alongside our other outreach projects such as community booths, business walks, Short-lived Climate Pollutant (SB 1383) outreach, and more. Technical assistance and education will be ongoing. Penalties for non-compliance with the regulations will be issued as a last resort and could result in fines for repeat or egregious violations.

City of San Diego Strategic Plan:

These actions help the City meet the goals of the Strategic Plan Priority Area, "Champion Sustainability," in that they will reduce litter and reduce waste going to the landfill, thus increasing the quality and health of San Diego's open spaces and providing diligent and innovative waste management.

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

The City of San Diego, as Lead Agency under the California Environmental Quality Act (CEQA), has prepared and completed a Program Environmental Impact Report (PEIR) (SCH No. 2020120099) dated July 20, 2022, covering this activity. A Notice of Preparation (NOP) soliciting input on the scope of the PEIR was issued on December 4, 2020. The Draft PEIR was made available for a 45-day public review beginning December 10, 2021 and ending on January 24, 2022. The Final PEIR, including City responses

to public comments received on the Draft PEIR, can be accessed on the City’s CEQA website at:
<https://www.sandiego.gov/ceqa/final>.

Climate Action Plan Implementation:

These actions support the City’s 2022 updated Climate Action Plan, Strategy 4, Circular Economy and Clean Communities, Measure 4.1, Changes to the Waste Stream. This measure specifically calls for approving and implementing the City’s Polystyrene Foam and Single Use Plastics Ordinance, as well as expanding the Polystyrene Foam and Single Use Plastics Ordinance to phase-out single-use materials and prioritize reuse rather than disposable goods.

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

The Single Use Plastic Reduction ordinance was passed in January 2019. Enforcement of the ordinance was stayed shortly thereafter due to a lawsuit. This item will be heard at Environment Committee prior to Council.

Planning Commission Action:

N/A

Key Stakeholders and Community Outreach Efforts:

Key stakeholders include City of San Diego residents and businesses.

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Deputy Chief Operating Officer