### **MINUTES**



# SUB COMMITTEE MEETING OF THE ENVIRONMENTAL QUALITY COMMITTEE

Thursday, February 23 2012, 7:00 p.m.
El Cerrito City Hall – Hillside Conference Room
10890 San Pablo Avenue
This Meeting Place Is Wheelchair Accessible

Chair Miner called the meeting to order at 7:08PM.

#### **Roll Call**

Miner, Corwin, Huang

1. Comments from the public on non-agenda items

No public comments.

### 2. Subcommittee Meeting on Potential Language for a "Foodware Ordinance"

The subcommittee reviewed sample ordinance language prepared by <u>Miner</u> that combined elements from four other existing municipal ordinances. Referenced ordinances included examples from the City of Richmond, Fremont, Palo Alto, and Millbrae.

The subcommittee reviewed the overview language, looking for redundancy and opportunity to consolidate statements of findings and declarations. One statement was added at the suggestion of Huang to make clear that the proposed penalty resulting from violation of the ordinance is not intended to generate revenue or cause harm to violators.

The subcommittee reviewed the definitions and discussed if the definition of "City Facilities" should include parks and recreation facilities such as park picnic tables. It was agreed that extending the ordinance provisions to community members renting or reserving space at City park picnic tables for events was beyond the scope of the proposed ordinance. The subcommittee additionally agreed that the definition of "Disposable Food Ware" should exclude lids and straws because compostable or recyclable variations of these products are not readily available. The subcommittee agreed the "Disposable Food Ware" definition should however include utensils. Given the choice between the ordinance language covering "Food Providers" as in Richmond or "Food Vendors", the subcommittee agreed that the definition of "Food Provider" was more over-reaching than the subcommittee felt comfortable recommending, because of its inclusion of any "entity, group or individual".

The subcommittee agreed not to recommend the ordinance require compostable foodware, but instead state that "all food vendors using disposable food service ware use compostable, reusable, or recyclable food service ware." The proposed language also states that it is strongly encouraged that foodware used at City Facilities be reusable or compostable, where practical.

#### COMMUNICATION ACCESS INFORMATION

To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call Garth Schultz, Staff Liaison at 559-7684 (voice) at least FIVE (5) WORKING DAYS NOTICE PRIOR TO THE MEETING to ensure availability.

In review of the Exemptions, the subcommittee agreed that the City Manager should grant exemptions where appropriate, for an amount of time to be determined by the City Manager. Where other ordinances specified the exemption period to be one year; the subcommittee did not want to place an undo burden on staff or businesses to reapply for the exemption.

The subcommittee discussed the possible ordinance violation and penalties and agreed to recommend the language adopted by the City of Richmond, primarily for consistency because of the proximity of the El Cerrito and Richmond businesses on San Pablo Avenue. Richmond's ordinance states that after a written warning notice of a violation, vendors have 30 days to comply or they will be found guilty of a misdemeanor with appropriate first tier administrative fines.

In regards to effective date, the subcommittee agreed to recommend the ordinance be effective 60 days after the date of its adoption by Council.

The subcommittee discussed ideas regarding the schedule, outreach and potential implementation. Corwin will draft a memo for the EQC's consideration to the City Manager summarizing the discussion and proposed Foodware Oridinance language. Following any revisions requested by the EQC, the subcommittee would like to meet with the City Manager to review the proposed approach and request an invitation from the City Manager be sent to food vendors in the City to attend a public meeting to review elements and language in the potential ordinance. It is also recommended that the City Manager's invitation include follow-up information about the reimbursement funds available for vendors to test alternative foodware materials. Following the public meeting, the proposed language would be revised according to the public's input and then redrafted for presentation to the EQC to recommend to the City Council.

The following timeline was proposed:

Draft summary memo from EQC to the City Manager – 3/6 Meet with City Manager – week of 3/12 Public Meeting – week of 4/16 Memo from EQC to City Council – 5/8

Corwin made a motion to provide the ordinance as revised to the EQC for consideration and to proceed with the schedule as discussed. Passed unanimously.

### 3. Adjournment

Adjourned by Miner at 8:40 p.m.

Any writings or documents provided to a majority of the Environmental Quality Committee regarding any item on this agenda will be made available for public inspection at the El Cerrito Recycling Center Offices at 7501 Schmidt Lane, El Cerrito, Monday - Thursday from 9 a.m. to 12 p.m. & 1 p.m. to 5 p.m.

### http://www.savesfbay.org/municipal-resources

City of Richmond Food Ware Ordinance and website

Fremont Expanded Polystyrene Food Service Ware Ordinance and website

Palo Alto Expanded Polystyrene and Non-Recyclable Food Service Containers Ordinance and website

City of Millbrae Sustainable Food Service Ware Ordinance and website

The four ordinances follow a similar structure

- 1. Findings & Declarations (Whereas ...)
- 2. Definitions
- 3. Requirements
- 4. Exemptions
- 5. Administration/Enforcement
- 6. Violation & Penalties
- 7. Construction & Preemption
- 8. CEQA
- 9. Effective Date

### 1. Findings & Declarations (Whereas ...)

### **Overview**

- a. WHEREAS, the City of El Cerrito has a duty to protect the natural environment, the economy, and the health of its citizens; and [Refer to City Mission Statement]
- b. WHEREAS expanded polystyrene and plastic are widespread, persistent environmental pollutants.
- c. 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 El Cerrito will further protect the public health and safety of the residents of El Cerrito, the natural environment, waterways and wildlife and would advance the City's goal of developing a sustainable City, and
- d. WHEREAS, the City of El Cerrito supports statewide efforts to reduce the prevalence of expanded polystyrene and other plastic litter.

### **Problem**

- e. WHEREAS, there continues to be no substantial recycling of polystyrene food service ware;
- f. WHEREAS, disposable food service ware contributes a significant portion of the litter in El Cerrito's streets, parks and public places which and the cost of managing this litter is high and rising;
- g. WHEREAS, a 2012 study by the Bay Area Stormwater Management Agencies Association, showed El Cerrito with the second highest volume of trash dumped into the bay, behind only tiny Colma. 510 gallons of trash per 1,000 El Cerrito residents were dumped annually into the bay compared to only 116 gallons for neighboring Albany.
  - $\frac{http://www.contracostatimes.com/portlet/article/html/imageDisplay.jsp?contentItemRelationshipId=4245014$
- h. WHEREAS, small pieces of expanded polystyrene are extremely difficult and costly to clean up, especially in creeks and waterways. These fragments are ingested by marine life and other wildlife thus harming or killing them; and
- i. WHEREAS, plastic particles in the ocean may leach a range of chemicals such as bisphenol A and substances known as polystyrene-based oligomers which are not found naturally; and

- j. WHEREAS, Both of the major chemicals used to produce expanded polystyrene, Benzene, (a known human carcinogen) and Styrene (a possible carcinogen and neurotoxin) are suspected by the EPA and Food and Drug Administration to leach from polystyrene food containers into food and drink posing a threat to the environment and human health. The chemicals leach in greater quantities when the food or drink are microwaved or of high temperature or high fat content.; and
- k. WHEREAS, expanded polystyrene and plastic packaging bans are encouraged by the Regional Water Quality Control Board.
- 1. WHEREAS In 2009, state regulators required cities and counties to reduce the amount of trash going into the bay by 40 percent by 2014 or face fines, with a goal of reducing it 100 percent by 2022. This food ware ordinance would assist in meeting that mandate.
- m. 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

### **Benefits**

n. 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

### **Impact**

- o. 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
- p. WHEREAS, due to these concerns, many cities in California cities such as Berkeley (1990), Oakland (2007), Richmond (2010) and San Francisco (2007) have successfully banned expanded polystyrene Food Ware and many small businesses and national corporations have successfully replaced expanded polystyrene and other plastic Food Ware with compostable products. cities began banning polystyrene foam food service ware including several California where local businesses and several national corporations have successfully replaced it and other non-biodegradable food service ware with affordable, safe, biodegradable products; and

- q. WHEREAS, the City of El Cerrito collects food waste and/or compostable Food Ware from city residents and businesses and many Bay Area businesses have demonstrated that the use of compostable Food Ware can reduce disposal costs when the products are taken to composting facilities rather than disposed in a landfill.
- r. 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
- s. WHEREAS, the spirit of this ordinance is to improve the environment, not to generate revenue through penalties and fines.
- t. WHEREAS, in light of the foregoing, the City Council desires to institute two specific practices by all food vendors in El Cerrito 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.

#### 2. Definitions

- a. "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. 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
- b. "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. (No Compostable in Palo Alto's ordinance. I like the description in Millbrae's definition, other cities definitions are shorter but mean the same thing)
- c. "<u>City Facilities</u>" means any building, structure or vehicle owned or operated by the City of El Cerrito, its agent, agencies, departments and franchisees. [Fremont includes park, recreation facility or property, but El Cerrito will not]
- d. "<u>Customer</u>" means any member of the public obtaining prepared food from a Food vendor [Richmond provider].

- e. "<u>Disposable Food Ware</u>" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, and knives and other items that are designed for one-time use for Prepared Foods, including service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids or straws. The City Manager or his/her designee may amend this definition as necessary. (Millbrae's ordinance includes lids and straws)
- f. <u>"Expanded Polystyrene"</u> means a thermoplastic petrochemical material utilizing the styrene monomer, marked with the recycling symbol #6, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, and extrusion-blow molding (extruded foam polystyrene) sometimes incorrectly called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.
- g. <u>"Solid Polystyrene"</u> Clear polystyrene which is also known as "oriented" Generally used to make clear clamshell containers, and clear or colored straws, lids, yogurt containers and utensils Polystyrene and has the number "6" as its recycling symbol.
- h. "<u>Food Vendor</u>" means any and all sales outlets, stores, shops, vehicles or other places of business located within the City of El Cerrito which 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.
- i. "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish, poultry or eggs sold from a butcher case or similar retail appliance. Prepared Food includes uncooked fruits and vegetables and any "take-out" food or food consumed on or off the food vendor's premises
- j. "Restaurant" means any establishment located within the City of El Cerrito 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.
- k. "Retail Food Vendor" means any place, other than a restaurant, located within the City of El Cerrito 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.

- 1. "<u>Reusable Food Ware</u>" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including but not limited to ceramic, glass, porcelain, and metal food ware.
- m. "Recyclable" means material that can be sorted, cleansed, and reconstituted using El Cerrito'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.

### 3. Requirements

- a. Food vendors are prohibited from providing prepared food to customers in expanded Polystyrene or Solid Polystyrene disposable food service ware.
- b. No Expanded 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.
- d. All food vendors using any disposable food service ware will use 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.
- e. All individuals, entities or organizations that rent or use City Facilities will use biodegradable, compostable, reusable or recyclable food service ware.
- f. The City will endeavor to use Reusable Food Ware in City facilities and events where practical. If Reusable Food Ware is not practical or a specific application, the City will use Compostable Disposable Food Ware.
- g. City franchises, contractors and vendors doing business with the city are strongly encouraged to use Reusable Food Ware in place of Disposable Food Ware where practical. If reusable Food Ware is not practical, for a specific application, City franchises, contractors and vendors doing business with the city are encouraged to use

Compostable Disposable Food Ware where practical.

### 4. Exemptions

- a. Foods prepared or packaged outside the City of El Cerrito are exempt from the provisions of this chapter. Purveyors of food prepared or packaged outside the City of El Cerrito 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 their 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. The city manager may exempt a Food Vendor from the requirements set forth in this ordinance 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 not generally applicable to other persons in similar circumstances. 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'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. Food Vendors seeking an exemption shall include all information on the exemption application for the city to make its decision including but not limited to documentation showing factual support for the claimed exemption. The city manager shall confirm the decision to grant or deny each exemption in writing and may approve an exemption request in whole or in part. The decision of the city manager shall be final.
- d. Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.
- e. Disposable Food Ware composed entirely of aluminum is exempt from the provisions of the chapter.
- f. Emergency supplies or services procurement 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.

#### 5. Administration/Enforcement

- a. 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.
- b. The City Manager or their designee will have primary responsibility for enforcement of this chapter. The City Manager or their 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.
- c. Anyone violating or failing to comply with any of the requirements of this chapter will be guilty of an infraction pursuant to [the appropriate section] of the Municipal Code.
- d. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

#### 6. Violation & Penalties

- a. If the City Manager or their designee determines that a violation of this chapter occurred, they will issue a written warning notice to the food vendor that a violation has occurred.
- b. Any person who does not correct the violation within thirty (30) days after the warning notice is mailed shall be guilty of a misdemeanor pursuant to [the appropriate section] of the El Cerrito Municipal Code. All violations are subject to El Cerrito's administrative citation process, including first tier administrative fines and appeals as set forth in [the appropriate] El Cerrito Municipal Code.
- c. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- d. 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 their 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.

### 7. Construction & Preemption

- **a.** 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.
- **b.** 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.

### 8. CEQA

a. 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 aproject 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.

#### 9. Effective Date

a. This ordinance shall be effective on the sixtieth day after the date of its adoption..