# PLANNING COMMISSION AGENDA REPORT

VII. 2

MEETING DATE: JUNE 13, 2011 ITEM NUMBER:

SUBJECT: RECYCLABLE / REUSABLE FOOD SERVICE CONTAINERS

DATE: MARCH 30, 2011

FOR FURTHER INFORMATION CONTACT: CLAIRE FLYNN, PLANNING ADMINISTRATOR
(714) 754-5278 (CFLYNN@CI.COSTA-MESA.CA.US)

## DESCRIPTION

This report provides background information regarding the promotion of recyclable and reusable food service containers.

## RECOMMENDATION

Consistent with Council policy, direct staff to allocate no more than 4 hours of staff time to research this issue and report back to the Planning Commission.

CLAIRE FLYNN, AICP
Acting Asst. Dev. Svcs. Director

## BACKGROUND/ANALYSIS

Attached is a PowerPoint presentation prepared by Commissioner Fitzpatrick that emphasizes the importance of recyclable/reusable food containers. In order to discontinue the use of expanded polystyrene (EPS or Styrofoam) food containers, a City ordinance is required.

The primary objective of such an ordinance is to divert food service containers from the landfill and prevent Styrofoam products at the Beaches, Harbors, Oceans and waterways.

Cities that have adopted ordinances include:

- Santa Monica
- Laguna Beach
- Newport Beach
- San Clemente

Please see the attached summary provided by the Earth Resource Foundation.

Subject to Planning Commission's direction, staff will continue to research this issue and analyze the ordinances adopted by other Cities. It would also be important to outreach to the Chamber of Commerce, South Coast Metro Alliance, and other local businesses with regard to their position on recycable/reusable food containers.

Following is a summary of the next steps:

- Staff reports back to the Planning Commission with more information, specifically with regard to comments received from local businesses and organizations.
- Planning Commission directs staff to seek Council authorization of an draft Ordinance.
- City Council directs staff to prepare a draft Ordinance.
- Ordinance is reviewed by the Planning Commission and City Council prior to adoption.

The overall timeframe to conduct this work activity is estimated over 6 to 8 months.

## CONCLUSION:

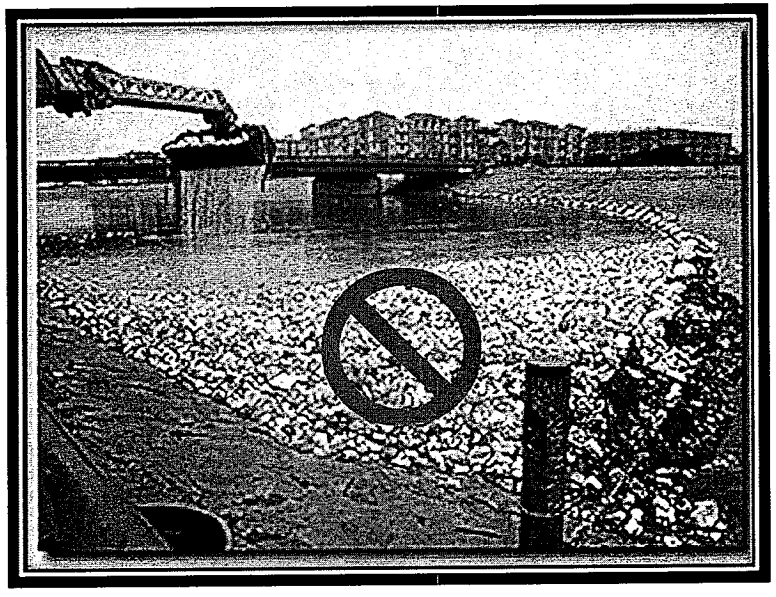
Subject to the Planning Commission's authorization of this work activity, staff will return to the Planning Commission with the finer details of the proposed program to promote reusable and recyclable food containers.

Attachments:
1. Powerpoint
2. Summary of Ordinances from other Cities

cc: Deputy City Attorney
Public Services Director
City Engineer
Transportation Svs. Manager

Earth Resource Foundation
PO Box 12364
Costa Mesa, CA 92627

# Ordinance Requiring Recyclable or ReUseable Food Service Containers



ATTACHMENT 1

# Executive Summary

## Ordinance Requiring Recyclable or ReUseable Food Service Containers

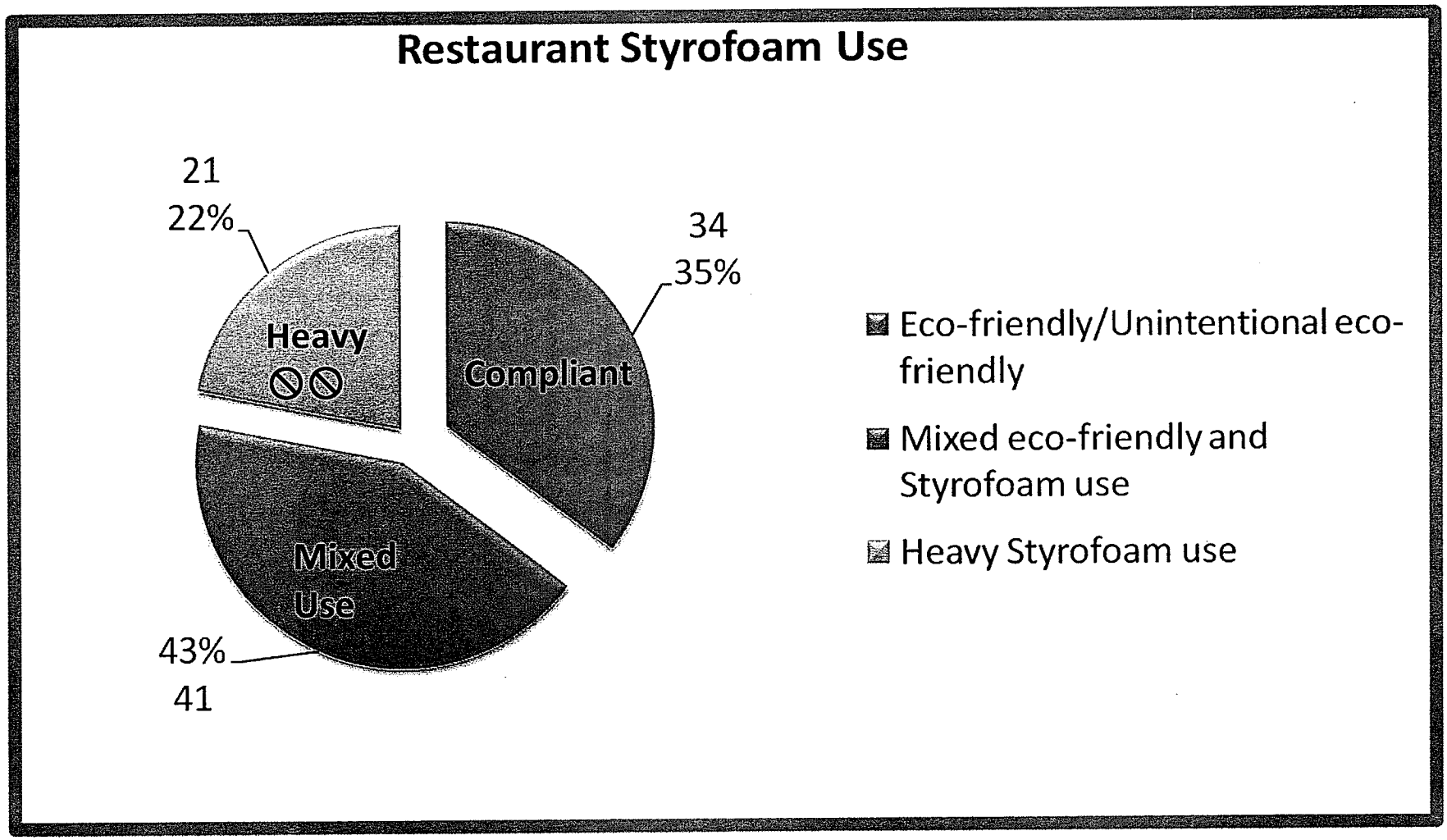
- Goal:
  - Divert Food Service Containers from Landfill with reasonable solution
  - Prevent Styrofoam at the Beaches, Harbors, Oceans and waterways
- Bans Expanded Polystyrene (EPS or StyroFoam)as well as all non-recyclable plastic disposable food service containers
  - Defines recyclable plastics as being comprised with recycling symbols #1 to #5
- Hardship Exemption:
  - Finance Director may exempt a food provider for up to one year if this ordinance would cause an "undue hardship":
    - Situations where no reasonable alternatives to EPS or non-recyclable plastic are available and would cause an economic hardship
    - Situations where no alternatives exist to a specific and necessary EPS or non-recyclable plastic use.

5

- Implementation Timeline
  - Voluntary Compliance goal of 6 months
  - All Compliant within 1 Year
  - Immediately : All City sponsored, managed, and anyone contracted to do business with the City is prohibited from using EPS or non-recyclable plastics.
- Enforcement:
  - Finance – Business Licensing
  - Community Support
- Compliance / Violations

EXAMPLE

# Costa Mesa Restaurant Surveys

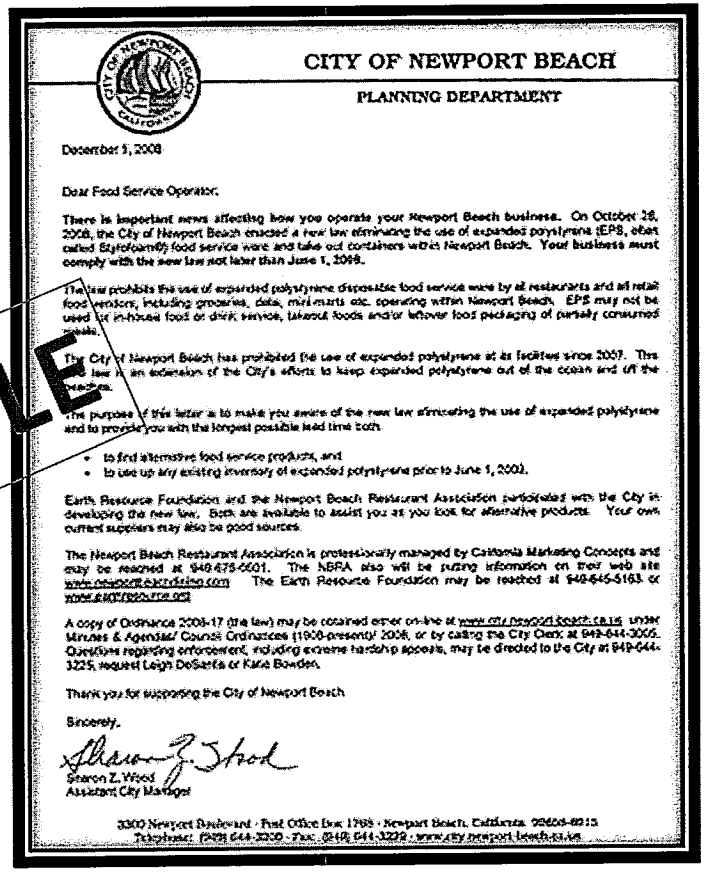



Source : ERF (96 Restaurants Surveyed)

# Compliance / Enforcement

Education/ Enforcement done in the following ways:

- Letter from City sent to all restaurants (see attached)
- Generate Media
  - City Public Information Officer
  - Earth Resources Foundation with quotes form the restaurants
  - Costa Mesa Green Team
- Support Needed:
  - Costa Mesa Chamber of Commerce
  - Newport Beach Restaurant Association and
- Follow-up and surveying of majority of restaurants by Earth Resources Foundation
- Involvement of community to report to City
- City of Costa Mesa through their website



CITY OF NEWPORT BEACH

PLANNING DEPARTMENT

December 1, 2008

Dear Food Service Operator:

There is important news affecting how you operate your Newport Beach business. On October 28, 2008, the City of Newport Beach enacted a new law eliminating the use of expanded polystyrene (EPS, often called Styrofoam®) food service ware and take out containers within Newport Beach. Your business must comply with the new law not later than June 1, 2009.

The law prohibits the use of expanded polystyrene disposable food service ware by all restaurants and all retail food vendors, including groceries, delis, mini-marts etc. operating within Newport Beach. EPS may not be used for in-house food or drink service, takeout foods and/or leftover food packaging of partially consumed meals.

The City of Newport Beach has prohibited the use of expanded polystyrene at its facilities since 2007. This law is an extension of the City's efforts to keep expanded polystyrene out of the ocean and off the beaches.

The purpose of this letter is to make you aware of the new law eliminating the use of expanded polystyrene and to provide you with the longest possible lead time both

- to find alternative food service products, and
- to use up any existing inventory of expanded polystyrene prior to June 1, 2009.

Earth Resource Foundation and the Newport Beach Restaurant Association participated with the City in developing the new law. Both are available to assist you as you look for alternative products. Your own current suppliers may also be good sources.

The Newport Beach Restaurant Association is professionally managed by California Marketing Concepts and may be reached at 949-675-0601. The NBRA also will be posting information on their web site www.newportbeachdining.com. The Earth Resource Foundation may be reached at 949-645-5163 or www.earthresource.org.

A copy of Ordinance 2008-17 (the law) may be obtained either on-line at www.city.newport-beach.ca.us under Minutes & Agendas/ Council Ordinances (1908-present)/ 2008, or by calling the City Clerk at 949-644-3005. Questions regarding enforcement, including extreme hardship appeals, may be directed to the City at 949-644-3225, request Leigh DeSantis or Kate Bowden.

Thank you for supporting the City of Newport Beach.

Sincerely,

Sharon Z. Wood
Assistant City Manager

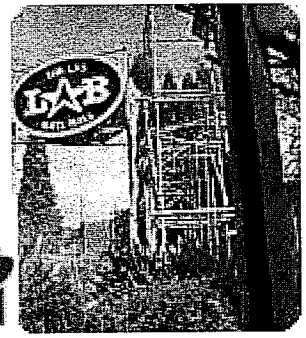
3300 Newport Boulevard · Post Office Box 1768 · Newport Beach, California 92658-8915
Telephone: (949) 644-3200 · Fax: (949) 644-3229 · www.city.newport-beach.ca.us

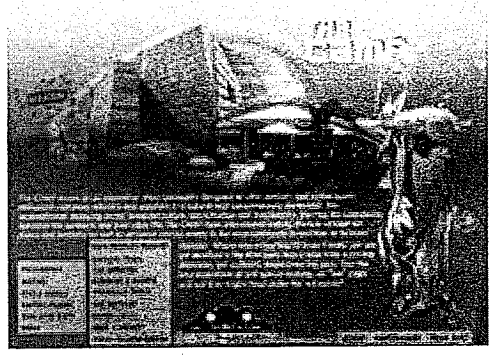
EXAMPLE

**Letter From City to Restaurant**

**NOTE**: There was 80% compliance in Newport Beach within 6 months. Most restaurants want to do the right thing (ERF)

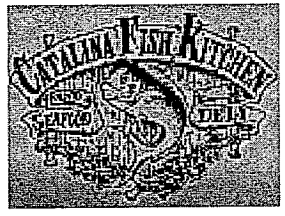
# Brands that have made the change





THINK OUTSIDE THE BUN. TACO BELL

Greenleaf gourmet chopshop
Because Green Is Good®



TACO MESA

Other operate in Newport Beach
...
easy transition

# Next Steps

- ✓ Planning Commission to Provide Staff Direction
- ✓ Develop Staff Report for formal Planning Commission Discussion
- ✓ Planning Commission to Review
- ✓ Planning Commission to make Recommendation to City Council

**Newport Beach**

→ Bans Expanded Polystyrene (EPS) disposable food service containers

→ All City Facilities, City-managed concessions, City sponsored events, and City permitted events are prohibited from using disposable food service containers made from expanded polystyrene.

→ The City Manager or his/her designee may exempt a food provider for one year if this ordinance would cause an "undue hardship":

1. Situations where no reasonable alternatives to EPS or non-recyclable plastic are available and would cause an economic hardship
2. Situations where no alternatives exist to a specific and necessary EPS or non-recyclable plastic use.

→ Exception

1. Food prepared outside the City of Newport Beach are exempt from this ordinance
2. In a situation where the City Manager deems an emergency for the immediate preservation of public peace, health or safety, City facilities, food vendors and any contractors with the City shall be exempt from this ordinance.
3. A written request from a food vendor claiming "undue hardship" on their business because of this ordinance can receive exemption for a period of one year.

→ Violations

→ Any person in violation or failing to comply to this ordinance shall be guilty of an infraction pursuant to section 1.04.010 and subject to citation and fines pursuant to Chapter 1.05 NBMC

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

**San Clemente**

→ Prohibits the use of Expanded Polystyrene disposable foodservice ware

→ All City Facilities, Food Vendors, city-managed concessions, city-sponsored or co-sponsored events, city permitted events, and all contractors, franchisees, and vendors doing business with San Clemente

→ Exceptions:

1. Food prepared and packaged outside the City of San Clemente are exempted from the ordinance
2. City Manager may exempt a Retail Food Vendor or Restaurant by a written request if it would cause "undue hardship" and receive a one-year exemption.
3. In a situation where the City Manager deems an emergency for the immediate preservation of public health, safety, and general welfare, the supplies and services may be exempted from the ordinance
4. Coolers and ice chests designated for reuse are exempt from the ordinance

→ Violations

1. Any violation of the ordinance will be enforced through the Administrative Citation Program set forth in Chapter 1.20 of the San Clemente Municipal Code.
2. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter
3. For each and every day that Disposable Food Service Ware made of EPS is provided shall constitute a separate violation of this Chapter.

9

ATTACHMENT 2

# City Styrofoam Ordinances Analysis
# Performed by: Earth Resource Foundation

**Santa Monica**

- → Bans Expanded Polystyrene (EPS) as-well as all non-recyclable plastic disposable food service containers
- → Defines recyclable plastics as being comprised with recycling symbols #1 to #5
- → All cities sponsored, managed, and anyone contracted to do business with the City is prohibited from using EPS or non-recyclable plastics.
- → Director of (EPWM) may exempt a food provider for one year if this ordinance would cause an "undue hardship":
    1. Situations where no reasonable alternatives to EPS or non-recyclable plastic are available and would cause an economic hardship
    2. Situations where no alternatives exist to a specific and necessary EPS or non-recyclable plastic use.
- → Director of the EPWM or his/her designee has responsibility for enforcement including inspecting any premises to verify compliance to the ordinance.
- → Violations enforced:
    1. 1st violation a written warning notice is given to the establishment in violation of this ordinance
    2. 2nd violation a fine of $100 is issued to the establishment in violation of the ordinance after a written warning was given
    3. 3rd violation is a fine of $250 after 2nd violation and written warning
    4. These fines are cumulative and each day in violation constitutes a separate fine

**Laguna Beach (very similar to Santa Monica)**

- → Bans Expanded Polystyrene (EPS) as-well as all non-recyclable plastic disposable food service containers
- → Retail food vendors are prohibited from retail sales of EPS or non-recyclable plastics
- → All cities sponsored, managed, and anyone contracted to do business with the City is prohibited from using EPS or non-recyclable plastics.
- → The City Manager or his/her designee has responsibility for enforcement including inspecting any premises to verify compliance to the ordinance.
- → Exceptions:
    1. containers or materials used for raw butchered meats, fish, and/or poultry sold from butcher
    2. The City may exempt an establishment from this ordinance for one year if they show this ordinance would cause an "undue hardship"
- → Violations
    1. 1st violation- a courtesy written warning notice of violation of the ordinance
    2. 2nd violation- fine not to exceed $100 after written warning
    3. 3rd violation- fine not to exceed $200 after written warning and 2nd violation
    4. 4th violation-fine not to exceed $500 and are cumulative where each day in violation is a new and separate violation.



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