

AGENDA REPORT

City Council

MEETING DATE: December 18, 2019

PREPARED BY: Erik Steenblock,
Environmental
Programs Manager

DEPT. DIRECTOR: Carl Quiram

DEPARTMENT: Public Works

CITY MANAGER: Karen P. Brust

SUBJECT:

Public Hearing and Introduction of Ordinance 2019-30, an Ordinance of the City of Encinitas, California, amending Encinitas Municipal Code Chapter 11.27 – Expanded Polystyrene Disposable Food Service Ware Prohibition Ordinance.

RECOMMENDED ACTIONS:

1. Receive the informational report on the comprehensive City of Encinitas Plastics Initiative and Phasing Plan (Attachment 2 and 3), and provide new and/or additional direction to staff;
2. Open the Public Hearing; and
3. Introduce Ordinance 2019-30, An Ordinance of the City of Encinitas, California, amending Encinitas Municipal Code Chapter 11.27 – Expanded Polystyrene Disposable Food Service Ware Prohibition Ordinance.

STRATEGIC PLAN:

This project aligns with the Strategic Plan Vision for:

- Environment - Be good stewards of open spaces, beaches, parks, and the natural environment.

FISCAL CONSIDERATIONS:

There is no direct fiscal impact associated with the recommended action.

BACKGROUND:

In 2019, the State of California recognized the pervasive problems associated with plastic pollution through the introduction Senate Bill 54 and Assembly Bill 1080, collectively known as the California Circular Economy and Plastic Pollution Reduction Act. These bills would require all single-use packaging manufactured or sold in California to be recyclable or compostable by 2030 and would

mandate a 75 percent reduction of waste generated by single-use packaging and priority single-use products through a combination of source reduction, recycling and composting. While the California legislature did not pass the California Circular Economy and Plastic Pollution Reduction Act before the close of the 2019 legislative session, the legislature will reconvene in early 2020 for reconsideration. While State legislation to address plastic pollution sources remains uncertain, local policy development continues to be an effective approach toward addressing this environmental issue.

On September 11, 2019, the City of Encinitas City Council approved the 2019-2020 Environmental Commission Work Plan. The 2019-2020 Work Plan includes Goal 14: Single-Use Disposable Plastics; described as follows, “Develop recommendations for reduction of Single-Use Disposable Plastics (SUDP's) in the City of Encinitas.” This Goal has been part of the Commissions’ Work Plan since 2018, and the Commission has developed several recommendations since that time to address single-use disposable plastics pollution in Encinitas.

Environmental Commission recommendations, in summary, include:

- A recommendation to require the distribution of plastic straws and plastic utensils upon request only, including fast food restaurants.
- A recommendation to expand the existing Expanded Polystyrene (EPS) ordinance to prohibit the retail sale of EPS products.
- A recommendation to regulate the distribution and/or sale of plastic beverage containers.

Relevant Environmental Commission Agenda Reports, defining each recommendation, have been included in Attachment 1.

ANALYSIS:

In response to the range of policy approaches recommended by the Environmental Commission (summarized above), staff has developed a comprehensive City of Encinitas Plastics Initiative (Plastics Initiative) to be instituted through a phased process. Phasing has been developed around the multiple plastic pollution sources addressed through this initiative and defined by impacted stakeholders and community sectors (e.g. food providers, retailers, City event permittees). Each phase of the Plastics Initiative will be implemented through the development of an ordinance or amendment to an existing ordinance to define the policy objective and intended outcomes. The comprehensive Plastics Initiative is visually depicted in Attachment 2 – City of Encinitas Plastics Initiative Infographic, and a detailed Phasing Plan has been included as Attachment 3. The defined phases, by plastic pollution sources, are summarized as follows:

Phase 1 – Plastic Straws and Utensils

Phase 2 – Plastic Beverage Containers at City Facilities and Events

Phase 3 – Retail Sales and Distribution of Expanded Polystyrene (EPS) Products

In addition, a detailed timeline for each phase is presented below, defining key milestones in the rollout of the comprehensive plastics initiative. Per the timeline below, the entire initiative, addressing all the identified sources, will be operative by October 2020.

	PHASE 1		PHASE 2	PHASE 3
	Straws upon request leading to prohibition	Utensils upon request	Prohibition of Plastic Beverage Containers at City Facilities & Events	Prohibition of Retail Sale of EPS, Plastic Straws & Plastic Utensils
City Actions Timeline				
Ordinance Introduction	Dec. 18, 2019	Dec. 18, 2019	February 2020	April 2020
Ordinance Adoption	Jan 22, 2020	Jan 22, 2020	March 2020	May 2020
Ordinance Effective Date	Feb. 22, 2020	Feb. 22, 2020	April 2020	June 2020
Ordinance Operative Date	Feb. 22, 2020 (Upon Request) August 1, 2020 (Plastic Prohibited)	Feb. 22, 2020	City Facilities – April 2020 City Permitted Special Events - September 2020	October 2020

Ordinance 2019-30 (Attachment 4), implements Phase 1 of the Plastics Initiative which targets the distribution of plastic straws and plastic utensils by food providers. Encinitas Municipal Code Chapter 11.27 – Expanded Polystyrene Disposable Food Service Ware Prohibition Ordinance was adopted by the City Council on November 9, 2016, and specifically prohibits the distribution of expanded polystyrene food service ware by food providers. Amendments to Chapter 11.27 have been developed in proposed Ordinance 2019-30 adding provisions to (in summary):

1. Require the distribution of beverage straws and plastic utensils only upon request by a customer or upon offer by a food provider, including fast food and takeout.
2. Prohibit the distribution of plastic utensils or beverage straws made of plastic at City Facilities, City-managed concessions, City-sponsored or co-sponsored events, City permitted special events on City property and all franchisees, contractors, and vendors doing business with the City.
3. Prohibit the distribution of beverage straws made of plastic by a food provider.

State of California Assembly Bill 1884 was signed into law on September 20, 2018, and became effective on January 1, 2019, prohibiting full-service restaurants from automatically providing plastic straws to customers. Proposed Ordinance 2019-30 more broadly addresses the distribution of both plastic straws and plastic utensils by all food providers in Encinitas, and specifically includes fast food and takeout orders. Upon adoption of Ordinance 2019-30, distribution of plastic straws and plastic utensils must be upon request of the customer or upon offer by the food provider only. Further, following a proposed 6-month grace period, a food provider will be prohibited from providing a beverage straw made from plastic. Collectively, provisions in Ordinance 2019-30 advance the preemptive State regulations, and more acutely regulate the distribution of both plastic straws and plastic utensils in Encinitas.

In the months preceding this public hearing, community engagement on the Plastics Initiative and specifically for Phase 1 targeted identified stakeholders and impacted community sectors. A community workshop was held on December 10, 2019 to engage with impacted stakeholders, offering an opportunity for staff to gain perspective, collect ideas, and listen to concerns on Phase 1 as well as the larger plastics initiative phases. In addition, direct engagement with key stakeholders has been conducted including meetings with the Encinitas Chamber of Commerce, Cardiff 101, Encinitas101, Leucadia 101, the California Restaurant Association (CRA), EDCO,

and the San Diego Chapter of the Surfrider Foundation. Additional direct and targeted engagement efforts will continue through subsequent phases of the Plastics Initiative.

For the broader Plastics Initiative, including Phase 1, an informational webpage was created on the City's website (<http://www.encinitasca.gov/plastics-initiative>), and will continue to be a central information sharing portal. An e-mail address (plasticfree@encinitasca.gov) was also established to receive comments and answer questions from interested parties.

Draft ordinance language reflecting the broader goals and intended outcomes of the Plastics Initiative was presented to the Environmental Commission on November 14, 2019, providing a public input opportunity, as well as occasion for the Environmental Commission to offer feedback and input. On December 12, 2019, the Environmental Commission approved a recommendation for approval of proposed Ordinance 2019-30 by City Council.

The City of Encinitas has retained the Solana Center for Environmental Innovation (Solana Center) to support the development and implementation of Ordinance 2019-30. For Phase 1, the Solana Center will create a Plastic Straw Alternative Products list to help affected food providers identify appropriate alternatives to plastic straws, as well as possible vendor options and has provided technical review of the proposed ordinance language. For the broader Plastics Initiative, the Solana Center has assisted with the development of the Plastics Initiative Phasing Plan (Attachment 3), outlining appropriate phasing details, identifying stakeholders, defining barriers and identifying solutions, and framing timelines for each phase. It is anticipated that additional support needs for future phases of the Plastics Initiative will be identified as each progresses and funding for additional support has been budgeted.

Pending proposed ordinance approval, staff will continue to coordinate with the Solana Center on the development and implementation of outreach and education efforts to assure broad community awareness and understanding of new regulations. These efforts may include, but not be limited to, the critical development of multi-lingual media communications and alerts via social media platforms.

Enforcement of the proposed Ordinance will be managed through a combined effort of the City's Code Enforcement Division of the Development Services Department and the Stormwater Management Division of Public Works. Enforcement will be initiated by one of two ways; 1) a complaint is received, prompting an investigation by Code Enforcement, or 2) a routine commercial facility Stormwater inspection identifies a compliance concern. Based upon the results of any investigation, as determined necessary and appropriate on a case by case basis, the City would have the authority to enforce the proposed Ordinance administratively, which may include assessing monetary penalties (Encinitas Municipal Code Section 108). In practice, as the proposed Ordinance becomes operative, it is anticipated that education will be a key strategy to bring awareness and to facilitate required distribution practices and prohibitions.

ENVIRONMENTAL CONSIDERATIONS:

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a "project" under Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

The action being considered will support Climate Action Plan Goal 6.1: Divert Solid Waste.

ATTACHMENTS:

1. Environmental Commission Agenda Reports – Plastics Recommendations
2. City of Encinitas Plastics Initiative – Infographic
3. City of Encinitas Plastics Initiative – Phasing Plan
4. Ordinance 2019-30



Environmental Commission Agenda Report

MEETING DATE: 12 April 2018

TO: Encinitas Environmental Commission

FROM: Commissioner James Wang

SUBJECT: Recommend Council to expand Ordinance 2016-12 to include ban of retail sale of Single-Use Expanded Polystyrene (EPS) food ware and packaging

RECOMMENDATION:

Recommend City Council to expand Ordinance 2016-12 to also ban the retail sale of Single-Use Expanded Polystyrene (EPS) products, including but not limited to¹ food ware² and fill packaging³.

CITY STRATEGIC PLAN FOCUS AREA/COMMISSION WORK PLAN:

This item supports **Strategy 6: Zero Waste and City Action ZW-1: Implement a Zero Waste Program** of the City's 2018 Climate Action Plan (CAP)⁴.

It is also on the Environmental Commission's **2017-2018 Work Plan⁵ Item 7B: Zero-Waste Goal and Intended Outcome:** *Develop recommendations for the definition, identification, and reduction of Single-Use Disposable Plastics (SUDP's) in the City of Encinitas.*

BACKGROUND:

In 1991 the City adopted Resolution 91-90 discouraging residents and businesses from purchasing and utilizing polystyrene foam products because of its negative attributes that contribute to the degradation of the environment.

In November 2106, the Encinitas City Council approved Ordinance 2016-12⁶ banning the use of Expanded Polystyrene food ware at food-serving establishments. This ordinance applied only to

- 1 Other products that could be included in a ban are EPS coolers, containers, ice chests, shipping boxes, and pool or beach toys. The City of Santa Cruz specifically includes these items in its ordinance (the Santa Cruz ordinance is attached; see §6.48.027 PROHIBITED SALES).
- 2 Examples of food ware items are cups, plates, trays, and clamshell containers.
- 3 A common example of EPS fill-packaging are "packing peanuts" and "Styrofoam" wrap.
- 4 http://encinitasca.gov/Portals/0/City_Documents/Documents/City_Manager/Climate_Action/Encinitas_Climate_Action_Plan_Final_01-17-18.pdf
- 5 <http://www.encinitasca.gov/LinkClick.aspx?fileticket=cwW1i2TcTqY%3d&tabid=192&portalid=0>
- 6 http://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=1411&meta_id=67989

Food Providers: establishments that provide prepared food such as restaurants, supermarkets, drive-through shops, and convenience stores.

ANALYSIS:

Ordinance 2016-12 does not apply to retail sale of EPS items. Many Encinitas retailers sell EPS food ware such as plates, cups, clamshell containers. Similarly, many shipping and delivery businesses sell EPS packing material. These products are just as environmentally-fractious as the EPS food ware banned by Ordinance 2016-12.

Many of the adverse effects of EPS were presented during the November 9, 2016 Council meeting under discussion of Item 10B⁷. Some of the salient points are:

- a) EPS is petroleum-based and is carcinogenic.
- b) EPS does not decompose for hundreds of years. Therefore, as litter, EPS, for all practical purposes, lasts forever. However, in dynamic environments, EPS breaks into small pieces that may be as small than 100 microns⁸.
- c) EPS is not recyclable⁹ if it is contaminated with any substance including food debris. Even if it is not contaminated, it is not economically viable to recycle.
- d) It is virtually impossible to sort EPS from the recycling streams since the Edco conveyor belts deliver material at over 20 tons per hour¹⁰, all of which is manually sorted. Consequently, EPS products are sent to landfill.
- e) Even if EPS is disposed of “properly”, its long life virtually guarantees that it will eventually be conveyed by wind and water downstream. Since all water flows to the ocean, that is the eventual endpoint of EPS.
- f) EPS pieces are easily ingested by birds and sea life because they resemble natural food particles. Ingestion of EPS is not healthy for any life.
- g) The very nature of EPS that makes it desirable for food ware and packaging also makes it difficult or expensive to transport, dispose, or recycle. Its low-density makes it expensive and cumbersome to transport or contain. It easily breaks into small pieces, compounding the containment problem. Static electricity allows small pieces to be easily scattered even if there is no wind. It is resistant to compression or compaction.

Pieces of plastic foam were the second most common item found during the 2017 San Diego Coastkeeper beach cleanups¹¹ (the most common item were cigarette butts).

In 2015, New York City became the largest US city to ban the sale of EPS articles, including food ware and packaging¹². NYC described its justification thusly:

After consultation with corporations, including Dart Container Corporation, non-profits, vendors and other stakeholders, the Department of Sanitation (DSNY), has determined that Expanded Polystyrene (EPS) Foam cannot be recycled,

7 http://encinitas.granicus.com/MediaPlayer.php?view_id=7&clip_id=1405&meta_id=67376

8 http://caseinlet.org/uploads/Plastic_ingestion_by_fish_1_.pdf

9 Information from Bob Hill, Edco Director of Recycling: Styrofoam must be clean and free of contamination lest it spoil their shipment to processors.

10 Response by Jeff Ritchie of Edco when asked by Russell Levan about the flow rate during the public comment period for Item 10A at the November 9, 2016 City Council meeting.

11 <http://www.sdcoastkeeper.org/learn/fishable/marine-debris/data-from-san-diego-beach-cleanups>

12 <http://www1.nyc.gov/office-of-the-mayor/news/016-15/de-blasio-administration-bans-single-use-styrofoam-products-new-york-city-beginning-july-1-2015>

which led to the ban. DSNY also determined that there currently is no market for post-consumer EPS collected in a curbside metal, glass, and plastic recycling program. As a result of the ban, manufacturers and stores may not sell or offer single-use foam items such as cups, plates, trays, or clamshell containers in the City. The sale of polystyrene loose fill packaging, such as “packing peanuts” is also banned.

Because EPS is so uniform, the same reasoning applies in all cities.

Studies conducted by the National Institute of Health measuring the prevalence of plastic debris in fish and shellfish have found that 67% of species have consumed such debris¹³. A study by Algalita Marine Research Foundation scientists found that 35% of fish had ingested plastic, averaging 2.1 pieces per fish¹⁴.

Plastic ingestion also impacts fish which live at depth¹⁵ since at night they surface to feed on plankton. Accumulation of non-nutritive products leads to malnutrition and eventual starvation. In addition, the buoyancy of ingested plastic inhibits the ability of these mesopelagic fish to return to their native depths.

The adverse effects of plastic consumption are not restricted to marine life: since plastic does not degrade and is not digestible, it persists in lifeforms and is readily passed up the food chain. People are at the top of the food chain.

A common type of EPS fill-packaging is packing peanuts. Due to their light weight, low density and propensity to charge with static electricity, they are difficult to contain. They may adhere to any electrically-insulating object and they move with the slightest breath of air. Their size and shape are similar in shape, size, and color to bread, which many birds recognize as food.

Ordinances of Other Jurisdictions

Approximately¹⁶ 114 California cities have ordinances similar to Ordinance 2016-12 banning Food Providers from using EPS containers¹⁷. Of these, at least 24 jurisdictions also ban retail sale of EPS products. Several of these cities started an ordinances like 2016-12 and then expanded them to include retail sales of EPS products¹⁸.

The City of Santa Cruz is a beach city similar in size to Encinitas (62000), and in 2008 started with an ordinance like 2016-12. In 2012, Santa Cruz expanded their ordinance¹⁹ to include bans on the retail sale of EPS products including food ware “as well as coolers, containers, ice chests, shipping boxes, pool or beach toys, packing peanuts, or other packaging materials.”²⁰

Locally, in 2015 Solana Beach instituted a ban on the use of both EPS food ware and packaging²¹. In 2018, Imperial Beach approved a similar ordinance²².

13 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585829/pdf/srep14340.pdf>

14 http://caseinlet.org/uploads/Plastic_ingestion_by_fish_1_.pdf

15 Mesopelagic fish live at intermediate ocean depths of 200 to 1000 meters.

16 This number is approximate because the count increases as new cities pass ordinances banning EPS.

17 <https://www.cawrecycles.org/polystyrene-local-ordinances>

18 Cities which expanded their EPS bans to include retail sales include Capitola, Carpinteria, Richmond, San Francisco, Santa Cruz, and Watsonville.

19 The Santa Cruz ordinance is attached, or it may be viewed at:

<https://static1.squarespace.com/static/54d3a62be4b068e9347ca880/t/559ab6ede4b0c805c28afdce/1436202733617/santa+cruz+city++EPS+Ordinance.pdf>

20 From Santa Cruz ordinance §6.48.027

ALTERNATIVES:

This section reviews environmentally-friendly alternatives to EPS food ware and packaging.

Food Ware

Vendors often display EPS containers next to more environmentally-friendly food ware (almost all food ware is more environmentally-friendly than EPS). The alternative products may be made from paper, or derivatives of sugarcane and wheat grass.

To gauge the economic impact that consumers may feel from a ban of EPS retail sales, the prices of typical food ware in both EPS and alternative forms were surveyed at several Encinitas stores: Smart and Final, Ralph's, the 99¢ store, and Vons (Table1).

Product	EPS	Alternative	Δ Cost of Alternative
9" x 9" Clamshell <i>Smart and Final</i>	\$10.99/100 11¢	\$15.49/50 (Sugarcane) 31¢	+20¢
9-inch Plate <i>Ralph's</i>	\$0.97/30 3.2¢	\$4.49/100 (Paper) \$4.5¢	+1.2¢
9-inch Plate <i>Ralph's</i>	\$0.97/30 3.2¢	\$12.99/100 (Chinet Eco-Friendly) 13¢	+9.8¢
10-inch Plate <i>99¢ Store</i>	\$1.00/10 10¢	\$1.00/10 (Paper) 10¢	0¢
6-inch Plate <i>99¢ Store</i>	\$1.00/30 3.3¢	\$1.00/60 (Paper) 1.6¢	-1.7¢
20-ounce Bowl <i>99¢ Store</i>	\$1.00/10 10¢	\$1.00/10 (Paper) 10¢	0¢
9-ounce Cups <i>Vons</i>	\$2.49/51 4.9¢	\$3.49/54 (Paper) 6.5¢	+1.6¢

Consider the impact of using the highest-priced alternative products for a family picnic requiring 20 each of the following items: a 9-inch plate (+9.8¢), a 6-inch plate (-1.7¢), a 20-ounce bowl (0¢), and a 9-ounce cup (+1.6¢). Each setting costs 9.7¢ more than the EPS version so the total added cost for 20 settings is $20 \times 9.7¢ = \mathbf{\$1.94}$.

Note that if the family choose paper plates instead of the Chinet Eco-Friendly plates, the price difference per setting would drop by 8.6¢ and the cost impact would then be $20 \times 1.1¢ = \mathbf{22¢}$.

The cost of using non-EPS food ware is a minor fraction of the total cost of hosting a party of 20.

21 <https://static1.squarespace.com/static/54d3a62be4b068e9347ca880/t/5632524ae4b02412b78ea418/1446138442277/SB+Polystyrene+ban+%28FINAL+for+adoption%29.pdf>

22 <https://static1.squarespace.com/static/54d3a62be4b068e9347ca880/t/5a692b0b0d929731fd092c7e/1516841740378/Imperial+Beach+Polystyrene+Ordinance.pdf>

23 The costs shown are shelf prices and do not include sales tax.

Packaging

There are many alternatives for packaging protection, including packing paper, air pillows, bubble wrap, crinkle-cut paper, and the cheapest and simplest of all: crumpled newspaper.

Not all packing material is equally suitable for all payloads, so comparisons are not straightforward. However, an estimate can be based on the cost for a given volume of packing material. The costs in the following table are based on prices and descriptions on [Amazon](#).

Packing Material	Amazon Cost	Cubic Feet	Cost per Cubic Foot
Plastic Peanuts	\$14.95	7	\$2.13
Air Pillows	\$12.99	5.33	\$2.43
Bubble Wrap	\$22.38	1.3	\$17.22
Crinkle-Cut Paper	\$14.99	3.6	\$4.17
Crumpled Newspaper	\$0	N/A	\$0

Plastic peanuts have the second-lowest direct cost. However, plastic peanuts also have the worst negative externalities²⁴ of any of the packing products. Negative externalities are difficult to quantify and cannot be readily shown in Table 2. That is the case with many negative externalities: for example, how can the costs of air pollution or litter be measured?

Even if the cost of the adverse effects of plastic peanuts cannot be quantified, it is intuitively evident that paper products have a much smaller environmental impact. It is especially hard to compete with both the direct and the external costs of the crumpled newspaper option.

OPTIONS:

Options to consider:

1. No action: continue the current situation, allowing continued retail sale of EPS products.
2. A non-binding resolution suggesting the reduced use of EPS products. Such a resolution states intent, but is not likely to produce meaningful results. For example, the City's 1991 Resolution 91-90 discouraged the sale and use of polystyrene products, but use of Styrofoam food containers continued until Ordinance 2016-16 took effect.
3. Modify the proposal of this report to include only the ban on EPS food ware, allowing the continued retail sale of EPS packaging material.
4. Modify the proposal of this report to include only the ban on EPS packaging, allowing the continued retail sale of EPS food ware.
5. Approve the **recommended** action: update Ordinance 2016-12 to ban the retail sale of single-use EPS products, specifically including food ware and packaging.
6. Expand Ordinance 2016-12 to ban retail sales of EPS products as in Option 5), and also include a ban on all single-use plastic food ware, including utensils, cups, cup covers, stirrers. This option would be the best step towards reducing Single-Use Disposable Plastics.

The Environmental Commission recommends Option 5, expanding Ordinance 2016-12 to also prohibit the retail sale of EPS food ware and fill packaging.

²⁴ A *negative externality* is the cost to third parties who were not involved in the production, sale, or use of a good, and who do not benefit from that good.

Options 1 and 2 will have no or little effect. Options 3 and 4 are not comprehensive and would still allow non-trivial quantities of EPS into the City's waste stream. Option 6 would be most effective at achieving reduction of Single-Use Disposable Plastics (SUDP), but also may be more difficult to attain.

Some vendors may object that the proposed ban will curtail sales. However, if large quantities of EPS products are being sold, then those quantities indicate the magnitude of the problem and constitute evidence of why it should be stopped. On the other hand, if only small quantities of the offending EPS products are sold, then there is little reason to object to the proposed ban.

PUBLIC SUPPORT:

The November 9, 2016 Council meeting had over 30 public speakers on the ordinance concerning the EPS ban; the speakers were approximately 10:1 in favor of the ban.

The March 21, 2018 Council meeting had about ten speakers all in favor (no speakers were opposed) of an ordinance that would reduce straw usage due to the adverse impact of plastics. While straws are not made of EPS, the problems caused by EPS and any SUDP are similar. Therefore, the same speakers are likely to also be in favor of any sort of EPS ban.

CONCLUSION:

The direct cost of environmentally-friendly alternatives to EPS may be slightly higher. But in light of the well-documented detrimental impacts of EPS, environmental responsibility is also important. The country of Haiti banned plastic bags and Styrofoam in 2012²⁵.

To protect the environment, California has some of the strictest fuel requirements in the country: gasoline costs more in this state than any other in the continental US. California was the first in the nation to require unleaded gasoline and catalytic converters. Although there was significant initial resistance based on the cost of the modifications, few people complain about the resulting clear air. Before catalytic converters, it often was difficult to see the nearby mountains from downtown Los Angeles; now it is a common sight.

Like air pollution, the true costs and impacts of EPS are not part of its purchase price, and its vendors and users are largely insensitive to its adverse effects. Instead, the negative externalities of EPS are distributed and are borne even by uninvolved parties.

The 30+ public speakers at the November 9, 2016 Council meeting were very much in favor of the ordinance banning use of EPS by food vendors. Numerous speakers stated that they would be more than willing to pay for environmentally-responsible packaging.

Ordinance 2016-12 is a good start towards reducing EPS usage in the city, but it is only a partial solution. Retail EPS food ware and packaging are just as harmful as the EPS covered by Ordinance 2016-12, and so should be banned as well.

Banning or restricting the use of single-use EPS food ware and fill packaging is consistent with the City's Zero-Waste Goal in the 2018 Climate Action Plan. It is also consistent with the City's existing goals of Sustainability, Single-Use Disposable Plastic Reduction and Zero-Waste.

25 <https://www.csmonitor.com/World/Americas/2012/0928/Haiti-bans-plastic-bags-and-styrofoam-containers>

Attachment: City of Santa Cruz Ordinance

Chapter 6.48 (Adopted July 23, 2012)

An ordinance of the City Council of the City of Santa Cruz amending Chapter 6.48

Sections: 6.48.010; 6.48.015, 6.48.020, adding 6.48.027, and amending 6.48.030, 6.48.040
of the Municipal Code pertaining to the
ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS

Be it Ordained By the City of Santa Cruz As Follows:

Section 1: Section 6.48.010 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.010 FINDINGS AND INTENT

The Santa Cruz City Council finds and declares that:

- (a) The City of Santa Cruz has a duty to protect its natural environment, its economy, and the health of its citizens.
- (b) The City of Santa Cruz borders the Monterey Bay National Marine Sanctuary. This federal preserve supports one of the most diverse and delicate ecosystems in the world. This sanctuary provides habitat for at least 33 mammals, 94 species of seabirds, 345 species of fish, and contains the largest kelp forest in the nation.
- (c) Eliminating the use of polystyrene/plastic foam products and other non-compostable, non-biodegradable, and non-recyclable food packaging will maximize the operating life of landfills and will lessen the economic and environmental costs of managing waste.
- (d) In 1989 the City of Santa Cruz adopted an ordinance calling for retail food establishments to voluntarily eliminate polystyrene foam food packaging material by 1992. Since that time the City has provided extensive education and outreach to both businesses and the public explaining the reasons to change to recyclable, biodegradable, and/or compostable packaging. Because the voluntary ordinance had not eliminated the use of polystyrene/plastic foam packaging in the ensuing 18 years, the City found it necessary to adopt mandatory restrictions. In 2007 the Environmentally Acceptable Food Packaging Ordinance was passed, which eliminated the use of polystyrene foam "to-go" containers in the City of Santa Cruz.
- (e) Discarded food and beverage packaging and products made from polystyrene/plastic foam constitute a significant and growing portion of the City's waste stream. Laws, policies and regulations pertaining to disposable food service ware and polystyrene/plastic foam products are a vital component in the City's efforts to reduce the amount of disposed waste.
- (f) Eliminating all non-biodegradable, non-returnable, and non-recyclable food packaging material and other polystyrene/plastic foam products from all establishments within the City of Santa Cruz will help protect the City's environment from contamination and degradation.

(g) Take-out food packaging that is biodegradable, compostable, and recyclable is the most responsible and sustainable choice for the City's tourist economy, its citizenry and its environment. When products are recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When biodegradable products are turned into compost they can reduce water use and lessen the need for fertilizer.

(g) Biodegradable take-out packaging such as cups, plates, clamshell containers, and cutlery are now made from paper, sugarcane stalk, corn bi-products, and potato starch. As these products degrade, they pose less of a danger to the environment and are not a permanent blight on the landscape. These products are available locally.

(h) Items made from polystyrene/plastic foam (commonly called Styrofoam) are not biodegradable, compostable, returnable, or recyclable, locally. Polystyrene/plastic foam breaks into smaller pieces and because it is lightweight, may be picked up by the wind even when it has been disposed of properly.

(i) As litter, polystyrene/plastic foam is highly durable, persisting longer than any other type of litter. There is a prevalence of polystyrene/plastic foam littering City parks and public places, streets and roads, waterways, storm drains and beaches. This litter ultimately floats, or is blown, into the Monterey Bay. This litter creates a financial cost to City residents and an environmental cost to natural resources.

(j) Marine animals and birds often confuse polystyrene/plastic foam with pieces of food, and when ingested, it can impact their digestive tracts, often leading to death.

(1) Polystyrene/plastic foam is manufactured from petroleum, a non-renewable resource.

(a) There is scientific evidence that styrene leaches from polystyrene foam containers into food and drink. The Environmental Protection Agency (EPA) has found that there are short- and long-term adverse health effects associated with exposure to styrene.

(b) It is not economically feasible at this time, to recycle polystyrene/plastic foam in the City of Santa Cruz.

(c) Prohibiting the use of polystyrene/plastic foam take-out food packaging and replacing it with food service ware that is biodegradable, compostable or recyclable, and, restricting the use of polystyrene/plastic foam products that are not wholly encapsulated or encased by a more durable material will further protect the Monterey Bay National Marine Sanctuary, City residents and visitors, and will support the City's goal of reducing waste and litter for a cleaner environment for generations to come.

Section 2: Section 6.48.015 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.015 DEFINITIONS

Unless otherwise expressly stated, whenever used in this chapter the following terms shall have the meanings set forth below:

(a) "Affordable" means that a biodegradable, compostable or recyclable product may cost up to 15 percent more than the purchase cost of the non-biodegradable, non-compostable or non-recyclable alternative(s).

(b) "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

(c) "Biodegradable" means the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

(d) "City of Santa Cruz Facility" means any building, structure or vehicle owned and operated by the City of Santa Cruz, its agents, agencies, and departments.

(e) "City of Santa Cruz Contractor" means any person or entity that has a contract with the City of Santa Cruz for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the City of Santa Cruz, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City of Santa Cruz.

(f) "Compostable" means all the materials in the product or package will break down, 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, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

(g) "Disposable Food Service Ware" is interchangeable with "to go" packaging and "food packaging material" and includes: all containers, clamshells, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, napkins and other items designed for one-time use for prepared foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.

(h) "Food Provider" means any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the City of Santa Cruz that offers food or beverage to the public.

(i) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.

(a) "Polystyrene/Plastic Foam" means blown expanded and extruded polystyrene (sometimes called Styrofoam) or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys.

(k) "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City of Santa Cruz. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

(kl) "Polystyrene/plastic foam products" means any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, cutlery, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.

(l) "Recyclable" means any material that is accepted by the City of Santa Cruz recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs.

(m) "Food Establishment" means all sales outlets, stores, shops, vehicles or other places of business located within the City which operate primarily to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Food establishment shall include, but not be limited to, any place 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, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, hotel, motel, movie house, theatre, 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, event, grocery store, public food market, produce stand, food stand, 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 and any organization, group or individual which provides food as part of its service.

(n) "Events Promoter" means an applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.

(o) "Vendor" means any store or business which sells or offers goods or merchandise, located or operating within the City of Santa Cruz, including those referenced in "Food Establishment," and "Food Provider."

Section 3: Section 6.48.020 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.020 POLYSTYRENE/PLASTIC FOAM DISPOSABLE FOOD SERVICE WARE PROHIBITED

- a) Food providers within the City of Santa Cruz may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- b) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all City of Santa Cruz facilities.

- c) City of Santa Cruz Contractors in the performance of City contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.

6.48.025 REQUIRED BIODEGRADABLE, COMPOSTABLE, OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE

- a) All food providers within the City of Santa Cruz utilizing disposable food service ware shall use biodegradable, compostable or recyclable products, unless there is no affordable alternative available as determined by the Director of Public Works (see definition of "Affordable" and Section 6.48.30 Exemptions). Food providers may charge a "take-out fee" to cover the difference in cost.
- b) All City of Santa Cruz facilities utilizing disposable food service ware shall use products that are biodegradable, compostable or recyclable.
- c) City of Santa Cruz contractors, and events promoters utilizing disposable food service ware shall use biodegradable, compostable, or recyclable products while performing under a City of Santa Cruz contract or permit.

Section 4: Section 6.48.027 of the Santa Cruz Municipal Code as hereby added to read as follows:

6.48.027 PROHIBITED SALES

No vendor or event promoter in the City of Santa Cruz may sell, rent or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 6.48.030. This specifically includes, but is not limited to, cups, plates, bowls, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, pool or beach toys, packing peanuts, or other packaging materials.

Section 5: Section 6.48.030 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.030 EXEMPTIONS FOR BIODEGRADABLE, COMPOSTABLE OR RECYCLABLE FOOD SERVICE WARE AND OTHER POLYSTYRENE/PLASTIC FOAM PRODUCTS

- a) There are no exemptions that allow for the use of polystyrene/plastic foam disposable food service ware.
- b) The Director of Public Works, or the Director's designee, may exempt a food provider from the requirement set forth in section 6.48.25(a) of this ordinance for a one-year period upon the food provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Director of Public Works or the Director's designee shall put the decision to grant or deny a one-year exemption in writing, and the Director's or Director's designee decision shall be final.

c)Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the Director of Public Works, or Director's designee, if the vendor can demonstrate in writing a public health and safety requirement or medical necessity to use the product. The Director of Public Works, or Directors designee, shall put the decision to grant or deny the exemption in writing and the decision of the Director or Director's designee shall be final.

d)An exemption application shall include all information necessary for the Director of Public Works or the Director's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Director or the Director's designee may require the applicant to provide additional information.

e)The Director Public Works or Director's designee may approve the exemption application in whole or in part, with or without conditions.

f)Foods prepared or packaged outside the City of Santa Cruz and sold inside the City of Santa Cruz are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Santa Cruz are encouraged to follow the provisions of this Chapter.

g)Meat trays are exempt from the provisions of this chapter.

h)Until such time that the City of Santa Cruz provides food providers and vendors with a municipal food scrap collection program, a blanket exemption is hereby granted allowing the use of plastic cutlery and drink lids.

i)Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.

j)Construction products made from polystyrene/plastic foam are exempted from this ordinance if the products are used in compliance with Santa Cruz Municipal Code Title 18 Buildings and Construction and Chapter 16.19 Stormwater and Urban Runoff Pollution Control and used in a manner preventing the polystyrene/plastic foam from being released into the environment

k)Emergency Supply and Services Procurement: In a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food vendors, City franchises, contractors and vendors doing business with the City shall be exempt from the provisions of this Chapter.

6.48.035 ENFORCEMENT AND NOTICE OF VIOLATION

a) Violations of this ordinance may be enforced in accordance with Chapter 4.14 of this Code.

b) The Director of Public Works, or the Director's designee, shall be responsible for enforcing this Chapter and shall have authority to issue citations for violations.
The

Director, or the Director's designee, is authorized to establish regulations or administrative procedures to obtain compliance with this chapter.

- c) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction.
- d) The Santa Cruz City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.
- e) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- f) The City of Santa Cruz in accordance with applicable law, may inspect any vendor or food provider's premises to verify compliance.

Section 6: Section 6.48.040 of the Santa Cruz Municipal Code as hereby amended to read as follows:

6.48.040 PENALTIES AND FINES FOR VIOLATIONS

Violations of this ordinance shall be enforced as follows:

1. For the first violation, the Director of Public Works or the Director's designee shall issue a written warning to the food provider or vendor specifying that a violation of this chapter has occurred and which further notifies the food provider or vendor of the appropriate penalties to be assessed in the event of future violations. The food provider or vendor will have 30 days to comply.
2. The following penalties will apply for subsequent violations of this Chapter:
 - a) A fine not exceeding one hundred dollars (\$100.) for the first violation 30 days after the first warning. The Director of Public Works or the Director's designee may allow the violating provider in lieu of payment of the fine, to submit receipts demonstrating the purchase after the citation date, of at least \$100 worth of biodegradable, compostable, or recyclable products appropriate as an alternative disposable food service ware for the items which led to the violation.
 - b) A fine not exceeding two hundred dollars (\$200.) for the second violation 60 days after the first warning.
 - c) A fine not exceeding five hundred dollars (\$500.) for the third violation 90 days after the first warning and for each additional 30 day period during which the food provider or vendor is not in compliance.
3. Food providers or vendors who violate this Chapter in connection with events authorized by Chapters 10.64 or 10.65 shall be assessed fines as follows:
 - a) A fine not to exceed \$200 for an event of 1 to 200 Persons
 - b) A fine not to exceed \$400 for an event of 201 to 400 Persons
 - c) A fine not to exceed \$600 for an event of 401 to 600 Persons
 - d) A fine not to exceed \$1,000 for an event of 600 or more Persons.

Section 7: This ordinance shall take effect and be in force thirty days (30 days) after final adoption. Warnings will take place up to six months after final adoption.

PASSED FOR PUBLICATION this day of _____, 2012 by the following vote:

AYES: Councilmember:

NOES: Councilmember:

ABSENT: Councilmember:

DISQUALIFIED: Councilmember:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

PASSED FOR FINAL ADOPTION this _____ day of _____, 2006 by the following vote:

AYES: Councilmember:

NOES: Councilmember:

ABSENT: Councilmember:

DISQUALIFIED: Councilmember:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the

original of Ordinance No. 2006-____ and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk



Environmental Commission Agenda Report

MEETING DATE: 13 June 2019

TO: Encinitas Environmental Commission

FROM: Commission Chair James Wang

SUBJECT: Request to City Council to consider an ordinance banning the sale or distribution of single-use beverage containers

RECOMMENDATION:

Request the City Council to consider an ordinance prohibiting the sale or distribution of single-use beverage containers.

KEY POINTS:

1. We produce close to 20,000 plastic bottles *per second*¹, each of which take around 500 years to decompose².
2. 79% of plastic bottles are not recycled but are thrown away³. The plastic from those bottles ultimately end up in the ocean. The Great Pacific Garbage Patch is a huge area of plastic waste⁴, but it is just the surface of an even greater mass of microplastics at depth⁵⁶.
3. Bottled water is the largest source of plastic bottles and it is virtually identical to tap water. Bottled water is not tested or monitored as closely as public tap water⁷⁸⁹. In a blind test, most subjects could not correctly identify the bottled water¹⁰.

1 <https://www.procon.org/headline.php?headlineID=005401>

2 <https://theecologist.org/2019/apr/03/san-francisco-bans-sale-plastic-bottles>

3 <https://www.bbc.com/news/science-environment-42264788>

4 <https://www.theoceancleanup.com/great-pacific-garbage-patch/>

5 <https://www.usatoday.com/story/news/nation/2019/06/06/forget-great-pacific-garbage-patch-theres-more-plastic-deep-sea/1349571001/>

6 <https://www.nature.com/articles/s41598-019-44117-2>

7 <https://www.independent.co.uk/life-style/why-bottled-water-is-one-of-the-biggest-scams-of-the-century-a8050841.html>

8 An example of monitoring and reporting of public tap water is here: <http://www.sdwd.org/2018waterqualityreport.pdf>. In contrast, commercial suppliers of bottled water do not commonly report the quality of their water.

9 For instance, San Francisco tests its water over 100,000 times a year: <https://sfwater.org/index.aspx?page=447>

10 <https://www.independent.co.uk/life-style/why-bottled-water-is-one-of-the-biggest-scams-of-the-century-a8050841.html>

4. Even if plastic is properly "recycled", it returns as a lower-grade of plastic; old bottles do not become new bottles. Recycled plastic cannot be recycled again due to degradation¹¹.
5. Besides the harm of the plastic bottles themselves, their production and transport produces pollution and greenhouse gases (GHGs). The National Park Service banned sales of bottled water citing the cost of trash collection, landfill and recycling costs¹².
6. San Francisco passed its plastic bottle bill in 2014, and extended it in 2016 to include packaged water¹³. This report proposes a similar ordinance for Encinitas (the text of San Francisco's ordinance may be found at <https://sfbos.org/sites/default/files/o0009-17.pdf>)
7. The low cost of plastic bottles paid by manufacturers, distributors, and end-users does not reflect the large external cost that is borne by everyone.
8. Beverage containers comprise 14% of all litter¹⁴.
9. Options to consider for a ban: a) include all containers rather than only plastic bottles; b) include all beverages rather than only water; c) include sales and distribution inside city limits rather than just city property.

STRATEGIC PLAN FOCUS AREA AND COMMISSION WORK PLAN:

1. This proposal is consistent with the **City of Encinitas Administrative Manual, Environmental Policy, Council Policy Number C025**¹⁵ in these areas:
 - a. Minimizes Waste: *The City of Encinitas will manage solid waste with the ultimate goal of achieving a zero-waste future. Waste shall be managed according to the following priorities: 1.) Prevent, 2.) Reduce, 3.) Reuse, 4.) Recycle, and 5.) Proper Disposal. The City will use the following as guides to achieving its waste management goals:*
 - *Work with local businesses to reduce plastic litter through alternative products.*
 - *Work with local businesses to encourage their suppliers to provide more sustainable/recyclable packaging.*
 - *Develop policies and programs that prevent and work toward Zero Waste.*
 - *Enforce litter and waste management ordinances, and include expanded awareness programs.*
 - b. Roles and Responsibilities of the Environmental Advisory Committee¹⁶ – *Identify specific steps that citizens and businesses can take to help Encinitas be a good environmental steward, and work with and support city departments to integrate these policy principles into the City's daily management and decisions.*
2. This item supports **Strategy 6: Zero Waste and City Action ZW-1: Implement a Zero Waste Program** of the City of Encinitas 2018 Climate Action Plan (CAP)¹⁷.

11 <https://www.unilad.co.uk/technology/100-recyclable-plastic-enabled-by-major-lab-breakthrough/>

12 <https://www.washingtonpost.com/news/federal-eye/wp/2015/07/30/park-service-to-big-water-no-federal-funding-for-bottled-water-bans-well-find-our-own-money-thanks>

13 <https://sfbos.org/sites/default/files/o0009-17.pdf>

14 <https://plasticoceans.org/the-facts/>

15 See page 4 of http://encinitas.granicus.com/MetaViewer.php?view_id=2&clip_id=1154&meta_id=49036

16 The **Environmental Advisory Committee** was the original name for the present-day **Environmental Commission**.

17 http://encinitasca.gov/Portals/0/City Documents/Documents/City Manager/Climate Action/Encinitas_Climate Action Plan_Final_01-17-18.pdf

3. This report's recommendation is consistent with the following **Environmental Commission 2018-2019 Work Plan¹⁸ Goals**: 3 - Environmental Policy, 5 - CAP Implementation, 15 – Zero Waste, and 16 Single-Use Disposable Plastics.

BACKGROUND:

The problem of plastic pollution is well-known and will not be further discussed here since that subject covered extensively in the references cited by the footnotes.

Because plastic pollution is worldwide, everyone (person, city, county, state, nation) is at least partially responsible for its cause and its solution.

Encinitas has been a leader for efforts such as reducing plastic bags, Styrofoam™ packaging, and plastic straws, and, as such, is a good candidate for being an early adopter of single-use beverage container restrictions too. The city can serve as a paragon for other cities wishing to reducing their waste.

ANALYSIS:

Bottled water has existed since the days before clean running water was available, but in the US it was not popular until about 1977 when Perrier launched an aggressive advertising campaign. The industry has grown considerably since then: the \$18.3B American bottled water industry sold over 13 billion gallons of water in 2017, over 67% of which was in single-serve plastic bottles¹⁹.

With 20,000 new bottles produced every second, each with a lifetime around 500 years, plastic bottles are not compatible with sustainable environmental goals.

Plastic bottles are made of polyethylene terephthalate (PET), most of which are derived from fossil fuels. Seventeen million barrels of petroleum were used to produce the plastic water bottles used in 2006, and production has increased over 65% since then²⁰.

While all single-use plastic bottles have detrimental impacts, plastic water bottles are especially egregious because their purported benefits do not definitively justify their costs (Figure 1²¹). Therefore, this report proposes a ban on the sale and distribution of single-use bottled water (with optional extensions to be described).

One objection to such a ban is that rather than choosing to drink tap water, users will shift from bottled water to less-healthy options such as soft drinks. People always have unwise choices available to them, and it is not the City's proper duty to "nanny" to its residents. However, it is the policies, roles, and responsibilities of the City and this Commission to protect the environment by reducing waste (see previous Section headed "STRATEGIC PLAN FOCUS AREA AND COMMISSION WORK PLAN").

A second possible objection is that bottled water provides an alternative for cases in which public tap water is not healthy – Flint MI is an example where bottled water was necessary. However, these cases are exceptionally rare and should they occur, then the situation can be re-evaluated to see if ban on plastic water bottles should suspended. Besides, in gross situations like Flint, water was generally not distributed using small bottles of water: larger sizes such as 5-gallon reusable bottles were used.

A further objection often raised is that plastic bottles are recyclable, and that the plastic problem can be readily solved by properly educating consumers. However, while almost every consumer knows that plastic bottles can be placed in recycling bins, but only a small percentage actually

18 http://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=1797&meta_id=90748

19 <https://www.procon.org/headline.php?headlineID=005401>

20 Ibid.

21 Figure courtesy of Dr. Mary Yang, Chair of the Solana Beach Climate Action Commission.

do so. Returns supported by California's 1987 CRV²² deposit on bottles has been flagging so more and more plastic bottles are disposed rather than recycled²³.

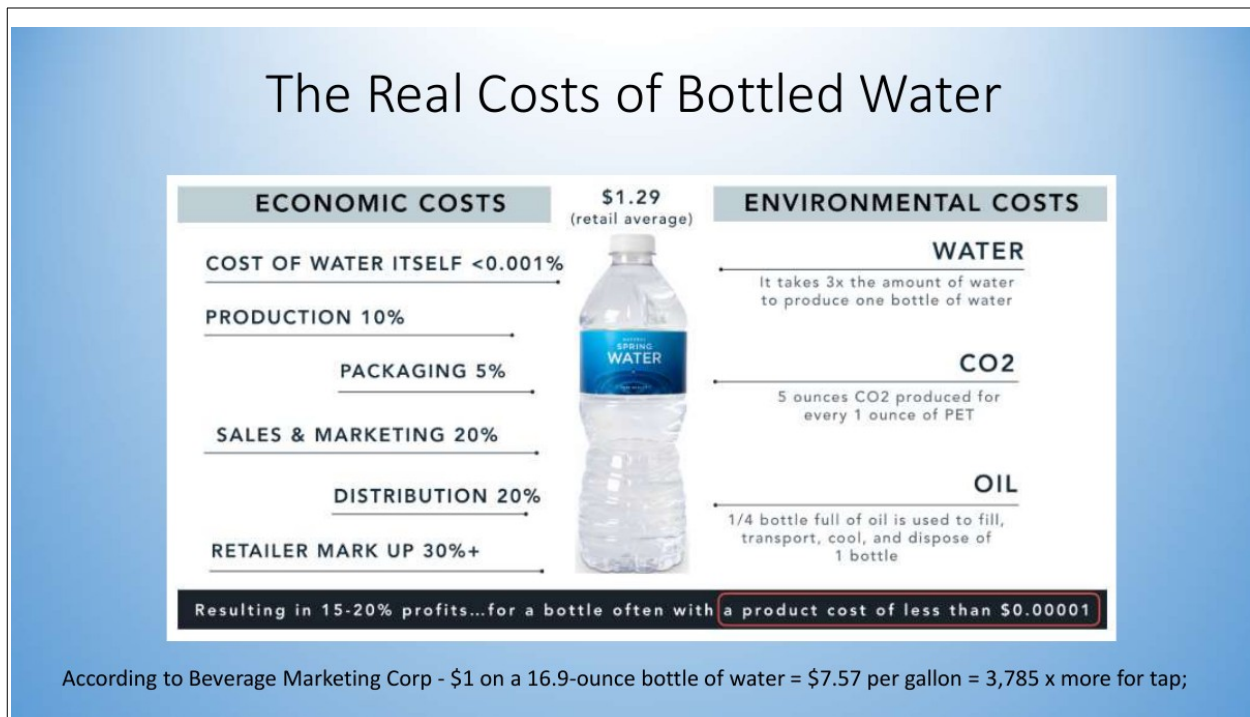


Figure 1: The cost of bottled water is more than just the price paid at the cash register. In this figure, the Economic Costs may be paid by the consumer, but the Environmental Costs are borne by the public and the natural environment. At the bottom of the figure, note the striking cost comparison between bottled water and tap water.

Due to degradation, plastic can be recycled only once and it returns as a lower grade of plastic. Plastic bottles do not come back as new plastic bottles, but as park benches, paint cans and the like²⁴. After that one reuse, the plastic is disposed and persists in the environment for centuries. Even if plastic could be recycled multiple times, the collection, transport and recycling of plastic is financially challenging: if such a business could be profitable, we would not have a plastic pollution problem.

A common objection to any ban is that it will restrict choice: it should be up to the consumer to decide whether or not to use a plastic bottle. However, when a consumer is faced with a choice between optimizing his or her own good versus that of the public good, that consumer chooses the former over the latter²⁵. It is the role of government to protect the public good. And that is why the government must pass laws on pollution and safety: clean and safe procedures are not always the most appealing to users and purveyors.

Recent studies have shown that tap water may in fact be healthier than bottled water because the latter is contaminated with unseen micro-plastic particles²⁶:

²² California Redemption Value

²³ <https://www.cawrecycles.org/california-bottle-bill>

²⁴ Oral communication with Bob Hill, EDCO Director of Recycling, after presentation to Environmental Commission 11 October 2018.

²⁵ Economists call the choice between selfish benefit and public benefit the *Tragedy of the Commons*.

²⁶ <https://www.cnn.com/2019/06/05/health/microplastic-particle-ingestion-study/index.html>

Whether you drink tap or bottled water is key to annual ingestion of micro-plastics: The researchers estimated annual particle intake via drinking water to be approximately 75,000 for boys, 127,000 for men, 64,000 for girls and 93,000 for women if bottled water is the only source.

For those who consume only tap water, additional microplastic intake for boys is 3,000 particles, 6,000 for men, 3,000 for girls and 4,000 for women.

With a near-zero cost of supplies, the bottled water industry is highly profitable. As such, they have financial incentive to maintain a positive public image for their product. Part of that image is to present bottled water as a healthier alternative to tap water. However, as noted above, research shows that that contention is questionable.

A variant on bottled water is packaged water²⁷. The typical packaging is waxed paper that is advertised as recyclable. Packaged water like this does not suffer from the possibility of microplastic ingestion, and it is not likely that its packaging will persist for 500 years. However, although the container may be recyclable, whether it is deposited in the recycling bin or the trash bin (or as litter) depends on the consumer. And the consumer's record on recycling is not propitious.

Plastic bottles of course are not limited to water: many other beverages use single-use plastic bottles too. In 2014, over 100 billion plastic beverage bottles were sold in the US – 315 bottles per person²⁸. The dominant use was for water – 57% - but that still leaves 43% of plastic bottles used for other beverages. So while the use for beverages other than water are a minority, it still constitutes a large number of plastic bottles (43 billion in 2014).

The health benefits of bottled beverages (including water) are not clear but the financial benefits to vendors is certain. No matter what, any possible benefits accrue to only a few while the environmental costs are long-term and are borne by many.

Growing awareness of this unbalanced and unjust distribution of benefits and costs is the impetus behind ordinances limiting bottled water.

SAN FRANCISCO ORDINANCE:

San Francisco received was the first major US city to ban the sale of plastic water bottles. However, San Francisco's ordinance is limited and is not a comprehensive ban on plastic bottles.

Some of the provisions of the San Francisco ordinance²⁹ include:

- a. Applies to "packaged water" sold in containers of 21 fluid ounces (later expanded to one liter or about 33.8 fluid ounces) or less. In this context, "packaged water" includes water in containers made of rigid plastic or other materials such as waxed paper or cardboard.
- b. Applies to sales on City property.
- c. Does not apply to athletic events.

ALTERNATIVES:

The most obvious alternative to bottled water in single-use plastic containers is to use refillable containers filled with public tap water. After San Francisco passed its ban (Ordinance 009-17³⁰),

27 <https://boxedwaterisbetter.com>

28 <https://plasticoceans.org/the-facts/>

29 The text of the San Francisco ordinance may be found here: <https://sfbos.org/sites/default/files/o0009-17.pdf>

30 <https://sfgov.legistar.com/View.ashx?M=F&ID=5028849&GUID=A470EC73-360C-4141-B634-F17FC925717C>

the city instructed event sponsors to provide adequate hydration stations and signage indicating directions to them. Event participants were encouraged to bring refillable bottles³¹.

San Francisco also started a *Drink Tap Program*³² which included the installation of numerous outdoor water bottle refilling stations around the city.

OPTIONS:

The foregoing Analysis section described choices for possible bans:

Containers: only plastic bottles or all packages

Contents: only water or all beverages

Areas covered: on City property only or within city limits

These choices suggest several options, listed here in approximate order of effectiveness in waste reduction:

1. **No action:** allow the current use and disposition of plastic bottles to continue unabated.
2. **Plastic water bottles on city property:** Institute a ban modeled on the 2014 San Francisco ordinance. The City of Encinitas already eschews the purchase and distribution of plastic water bottles for its events. The major change may be at events organized by the City with outside vendors, such as the Encinitas Street Fairs, the Leucadia ArtWalk and Oktoberfest.
3. **Packaged water on city property:** Institute a more stringent restriction modeled on the 2016 update the San Francisco ordinance (Footnote 29) which includes packaged water in addition to water in plastic bottles.
4. **Packaged beverages on city property:** Extend the ban to include all beverages instead of only water. The City of Solana Beach is scheduled to consider such a ban this summer³³. While most containers are for water, other beverages comprise a large fraction (43%). An argument to include all beverages is that it will stop the “leakage” that may result from people shifting from water to other beverages, thus defeating the reduction of single-use containers.
5. **Packaged water within city limits:** A ban on sale of packaged water within city limits (not just on city property). Such a ban would include a ban on sales in retail stores such as supermarkets. Concord MA instituted such a ban in 2013³⁴ and was soon followed by bans in the nearby towns of Sudbury, Lincoln, and Great Barrington. The town of West Tisbury MA passed a ban on carbonated beverages (i.e. soft drinks) in single-use plastic bottles.
6. **Packaged beverages within city limits:** Extend Option 5 to include all beverages instead of only water.
7. **Phased ban starting with Option 2 and proceeding to Option 6:** A progressive ban starting with plastic water bottles on city property (Option 2) and proceeding with Options 3, 4, 5 and 6 on a set schedule to include all single-use beverage containers within city limits (Option 6).

31 <https://sfwater.org/index.aspx?page=912>

32 <https://sfwater.org/index.aspx?page=447>

33 Refer to pages starting at 235 in the Agenda Packet for the Solana Beach City Council meeting of 13 November 2018 available here: [https://www.ci.solana-beach.ca.us/vertical/Sites/%7B840804C2-F869-4904-9AE3-720581350CE7%7D/uploads/11-13-18_Reg_Agenda_PACKET\(1\).pdf](https://www.ci.solana-beach.ca.us/vertical/Sites/%7B840804C2-F869-4904-9AE3-720581350CE7%7D/uploads/11-13-18_Reg_Agenda_PACKET(1).pdf)

34 <https://www.wgbh.org/news/local-news/2018/06/05/a-look-at-concords-plastic-water-bottle-ban-five-years-in>

Given the current dire status of plastic pollution and the dim prospects of meaningful mitigation in the near future, the Environmental Commission recommends **Option 7**, the option that offers the most comprehensive reduction in waste.

The suggested schedule for this phased ban is to start immediately with Option 2 and to reach Option 6 by 2030. Such a date aligns this plan for waste reduction with the 2018 Climate Action Plan's Goal 6.1: Divert Solid Waste 2030 Goal³⁵.

The staged implementation of Option 7 allows all stakeholders to anticipate and prepare for changes.

PUBLIC SUPPORT:

Encinitas residents are environmentally sensitive and understand our responsibility. At Commission and Council meetings when environmental issues such as the plastic bag ban, the EPS ("Styrofoam™) ban, and plastic straw ban were discussed, public support was vocal. Opposition to these bans mainly came from parties with vested interests.

This ban recommended in this report is likely to receive similar support and objection. Like the plastic bag ban, if it is implemented, it may take some time for people to modify their habits to accommodate the change. But just as people have developed the habit of bringing reusable bags to the store, they can develop the habit of bringing a reusable water bottle should they anticipate the need.

CONCLUSION:

Single-use beverage containers may provide a modicum of convenience and may benefit a few people for a brief period, but its many unintended costs are long-term and impact many people and the environment:

1. Litter that persists for centuries
2. Emission of greenhouse gases for manufacture, transport and disposal
3. Increased demand for fossil fuels
4. Unknown quality control, monitoring and reporting of the contents
5. Unhealthy, undisclosed and largely unknown ingestion of plastic micro-particles
6. For bottled water, a financial cost that is over 3000 times that of its substitute: tap water
7. Endangerment to wildlife

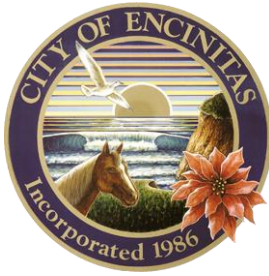
The threat imposed by waste that can persist for centuries is **existential**. Such waste remains in our environment and much of it eventually ends up in the ocean. Human life depends on healthy oceans.

This dependency is why the Environmental Commission recommends the most aggressive option, that of banning the sale and distribution of all single-use beverage containers. Implementation of the ban will occur on a phased and scheduled basis.

Plastic pollution is a global problem and the City of Encinitas alone cannot solve it. But like climate change, every person and every institution has contributed to the problem and must also contribute its solution. For example, by committing to an aggressive and highly-regarded Climate Action Plan, Encinitas has demonstrated its responsibility in climate action mitigation.

The action recommended in this report is an analogous demonstration of the City's responsibility in reducing single-use plastics. Such a commitment is not just a bold statement: it is also a paragon for other jurisdictions to follow.

35 See page 3-14 in the 2018 Climate Action Plan: https://encinitasca.gov/Portals/0/City%20Documents/Documents/City%20Manager/Climate%20Action/Encinitas_Climate%20Action%20Plan_Final_01-17-18.pdf



Environmental Commission Agenda Report

MEETING DATE: November 8, 2018
PREPARED BY: James Wang, Commission Chair
SUBJECT: Updated Recommendation on the Regulation of Plastic Straw
Distribution by Request Only

RECOMMENDATIONS:

1. Receive the updated report, and discuss options.
2. Request the City Council to extend their previous approval for proceeding with a Straws-on-Request ordinance to include two modifications resulting from recent circumstances:
 - a. So as to not redundantly overlap with the recently passed State AB1884, change the covered establishments to those that are not covered by AB1884, including (but not necessarily restricted to) take-out, fast-food, and mobile food-serving establishments.
 - b. Include plastic utensils (in addition to plastic straws as originally requested) as items to be distributed on request-only. This policy will be consistent with the City of San Diego's distribution policy as approved by their City Council on October 15, 2018.

REPORT UPDATE:

The concept of a single-use plastic straw distribution control policy in Encinitas was introduced at the November 9, 2017 regular Environmental Commission meeting, through a Commissioner Initiated Item. A final report and recommendation (Attachment 1) was considered and approved as an Action Item by the Environmental Commission on December 14, 2017. The original recommendation requested an ordinance requiring all food-serving establishments to distribute plastic straws on request only. The target establishments included full-service restaurants, fast-food restaurants, and take-out restaurants.

The City Council approved the initial recommendation on March 21, 2018. Since that time (on September 30, 2018), the State of California passed Assembly Bill 1884 (AB1884), which requires full-service (as defined by AB 1884) restaurants to distribute plastic straws only upon request. However, AB 1884 excludes fast-food and take-out restaurants.

The passage of AB1884 overlaps and preempts the recommendation in the original recommendation report concerning full-service restaurants. However, as mentioned in the original report, fast-food and take-out restaurants are the source of many plastic straws.

Therefore, this report revises the recommendation in the original report to address all food-serving establishments not covered by AB1884: all food-serving establishments excluded from

AB1884 may only distribute plastic straws requested by a customer. Explicitly included in local regulation should be fast-food restaurants, take-out restaurants, and temporary food-serving establishments such as mobile food trucks and transient booths service temporary events.

On October 15, 2018, the San Diego City Council approved Councilmember Ward's "Proposed Ban on Polystyrene Foam and Restrictions on Single-Use Plastics in the City of San Diego".¹ San Diego's ban is more comprehensive than the ban originally proposed in this report because it includes an outright ban on many food and non-food foam products in addition to requiring customer request-only distribution of plastic straws and utensils.

The City of San Diego ban covers both Expanded Polystyrene (EPS or foam) products and plastic straws and utensils. In April 2018, this Commission already recommended expanding the City's ban on foodware EPS to retail sales of EPS². Therefore, the update to this report is to expand the distribution of plastic foodware items to be consistent with that of the City of San Diego: plastic straws and plastic utensils are to be distributed only upon customer request.

CITY STRATEGIC PLAN FOCUS AREA/COMMISSION WORK PLAN:

2017-2018 Work Plan Item 7B: Zero-Waste Goal and Intended Outcome: *Develop recommendations for the definition, identification, and reduction of Single-Use Disposable Plastics (SUDP's) in the City of Encinitas.*

BACKGROUND:

The National Park Service (NPS) estimates that Americans use 500 million plastic straws **each day**³. This quantity of straws would fill 125 school buses, or would encircle the Earth more than three times. Only a small fraction of these straws are recycled⁴. Plastic straws are the quintessential Single-Use Disposable Plastic named in Commission Work Plan Item 7B.

Plastic straws are not natural and adversely impact all life. Sea life may be the most profoundly affected since straws float and are mobile in water: they can snarl marine animals, mimic food, and may be unwittingly consumed by sea life. A recent video of a sea turtle with a plastic straw painfully stuck in its nostril achieved infamous notoriety⁵.

In 2015, ***I Love A Clean San Diego*** volunteers collected over 15000 plastic straws from local beaches⁶. Since these represent only the readily-collectible straws at selected beaches at cleanup times, the actual number of straws in circulation is no doubt much higher.

ANALYSIS:

Plastic straws are luxuries that are unnecessary for most people⁷. They are Single-Use Disposable Plastics that are convenient for a few minutes and are then discarded. Once in the environment, straws persist for decades, if not centuries. During that entire period they

1 See Item 200 in this document:

<https://onbase.sandiego.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=1336&doctype=1>

2 The Environmental Commission's report on expanding the City's current EPS ban to retail sales is available here: http://encinitas.granicus.com/MetaViewer.php?view_id=7&event_id=1674&meta_id=85256

3 https://www.nps.gov/commercialservices/greenline_straw_free.htm

4 People rarely recycle straws, and many recycling centers discard them anyway: they are too light to provide any meaningful return, and their diminutive size clogs machinery.

5 <https://www.youtube.com/watch?v=d2J2qdOrW44>

6 <http://www.ilacsd.org/wp-content/uploads/2017/03/ILACSDAnnualReport16.pdf>

7 Few people require straws to drink a beverage, as evidenced by the paucity of people who use straws to drink beer, wine, coffee, or tea.

endanger wildlife, constitute unsightly litter, and release toxins. Their short-term benefit does not justify their long-term cost.

Currently, many restaurants routinely include a straw with every drink, whether or not the customer wants one. In contrast, the proposed straw-on-request policy gives consumers a choice: they may choose to request a straw, but if they do not, they are not automatically given one. It is not a *ban* on straws: customers still can get free straws on request.

This policy has at least four benefits:

1. An immediate reduction in straws destined for landfill. Encinitas likely wastes tens of thousands of plastic straws⁸ daily because they were not used or wanted. Used or not, the straws are discarded. The direct cost of the straw is minimal, but the cost of straw disposal is a long-term insidious cost borne by the public.
2. A reduction in cost for vendors since fewer straws will be distributed.
3. Reduced litter. The City is loved for its beaches, its habitat, and its care and concern for the ocean, its beaches, and its sea life. Persistent ocean trash is especially distasteful.
4. A heightened awareness of environmental impacts by customers. This benefit is not quantitatively measurable but it may be the most significant. By requiring a request, people will be aware of the City's environmental concerns and will consider whether a straw is really needed.

Davis, CA recently enacted a straw-on-request ordinance⁹. Unfortunately, their ordinance omits the straw choice from fast-food and take-out customers. Since these establishments are major sources of straws, this exemption should be removed.

During the recent drought, the California Water Resources Board passed a regulation requiring that restaurants serve water to customers only if they requested it¹⁰. While the savings in water may have been small, the policy heightened people's awareness of water scarcity and its preciousness. A similar straws-on-request policy will save more than a nominal number of straws, and will also heighten awareness about plastic pollution.

When the water-on-request-only policy was in effect, many restaurants displayed placards explaining the policy and its justification. A similar procedure could be used for the straws-on-request-only policy.

A recent San Diego Union-Tribune article shows avid public support for reducing the use of straws¹¹, even amongst restaurateurs. An October 2017 Washington Post article cites a "burgeoning movement" to "please stop using disposable plastic straws"¹².

ALTERNATIVES:

Before plastic, paper straws were used. New paper straws are more durable than old ones and do not have the detrimental attributes of plastic straws. Paper straws¹³ are a viable alternative.

8 For an order-of-magnitude estimate, consider that Encinitas has about 180 restaurants. If the average daily distribution is 100 straws, that's 18000 straws. By another measure, the NPS estimate (Footnote 3) suggests that each American uses 1.6 straws per day. In Encinitas, that would be about 100,000 straws per day.

9 The Davis ordinance is attached, or see: <http://cityofdavis.org/city-hall/public-works/solid-waste-and-recycling/beverage-straw-ordinance>

10 <https://sf.eater.com/2015/3/17/8237891/serving-water-california-prohibited-without-request-bars-restaurants>

11 <http://www.sandiegouniontribune.com/communities/north-county/sd-no-plastic-straws-20171013-story.html>

12 https://www.washingtonpost.com/lifestyle/style/consider-the-plastic-drinking-straw-why-do-we-suck-so-much/2017/10/23/02dfe49e-a77d-11e7-850e-2bdd1236be5d_story.html

13 <https://www.aardvarkstraws.com>

OPTIONS:

Other options to consider:

1. No action: continue the current situation, and take no action to reduce straws.
2. A non-binding resolution suggesting a straws-on-request-only policy. A non-binding resolution states intent, but is not likely to be effective. For example, in 1991 the City passed Resolution 91-90 discouraging the sale and use of polystyrene products, but use of Styrofoam containers continued until the City's ban that was effective earlier this year.
3. A complete ban on single-use plastic straws, rather allowing them on request-only. Such a ban would be effective in straw reduction, and this option was strongly advocated by a number of public speakers at the November Environmental Commission meeting. Based on the reaction of audience members, a complete ban may even be palatable to a majority of residents. However, a segment of the population may in fact require straws for medical or practical reasons, and a small but vocal segment may insist on using a straw. The proposed straws-on-request policy is a compromise that addresses the needs of all parties.
4. A ban on all single-use plastic foodware, including utensils, cups, cup covers, stirrers. This option will certainly reduce single-use plastics, but is likely to be strongly opposed by many parties.

The Environmental Commission recommends an ordinance that prohibits food-serving establishments from distributing plastic straws unless they are specifically requested by a customer. This ordinance would be similar to the attached Davis, CA ordinance, eliminating the 17.03.020 Exemption for Fast-Food Service and Take-Out Orders.

The Commission recommends this action as a compromise between the current situation that results in wasteful distribution of straws, and the more stringent but more effective Options 3 and 4 above.

PUBLIC SUPPORT:

This proposal was first considered by the Environmental Commission at its November 2017 meeting. The Commission audience comprised 25-30 members of the public, possibly our largest audience ever. Fifteen speakers were in favor of the proposed ordinance; none were opposed. Approximately one-third of the speakers asked for a complete ban on plastic straws.

Fifteen speakers is an exceptional number for any Commission item, and may be the most ever in the Commission's history. Based on this non-scientific sample, public sentiment is strongly in favor of this proposal.

A petition started by California State University/San Marcos students has gathered over 400 signatures in support of the policy expressed in this proposal¹⁴.

CONCLUSION:

Plastic straws may adequately serve their original purpose, but they come with unintended, unforeseen and harmful consequences. The cost of these consequences is not borne by those who benefit (the manufacturers, the vendors, and the users). Instead, the straws adversely impact wildlife and the environment, and ultimately, everyone.

Each day in Encinitas, thousands of straws end up in landfill or as litter. If food vendors supply straws on request only, this quantity will be significantly reduced.

14 <https://www.change.org/p/support-csuscmb-students-to-ban-plastic-straws-in-beach-cities>

The proposed straw policy benefits the environment, the City, vendors, and customers at no cost. Furthermore, it is consistent with the Commission's Work Plan Item 7B Zero-Waste Goal. It is also consistent with the City's goals of Sustainability, Single-Use Disposable Plastic Reduction and Zero-Waste.

Based on the number of people who attended the Commission's November meeting and the number of speakers, this proposal has strong public support.

Attachment: City of Davis Ordinance

ORDINANCE NO. 2502

AN ORDINANCE ADDING ARTICLE 17.03 TO THE CITY OF DAVIS MUNICIPAL CODE TO ENACT PROCEDURES AND PROHIBITIONS REGARDING THE DISTRIBUTION OF BEVERAGE STRAWS TO REDUCE WASTE AND SETTING FORTH THE PENALTIES FOR VIOLATION

WHEREAS, on December 6, 2011, the City Council adopted Resolution No. 11-185, Series 2011, in which the City announced its intention to strive to implement zero waste strategies; and

WHEREAS, one of the City Council goals is to Pursue Environmental Sustainability; and

WHEREAS, the City Council desires to conserve resources and reduce greenhouse gas (GHG) emissions, waste, litter, and pollution; and

WHEREAS, eliminating the distribution of unneeded straws provided to customers reduces the amount of plastic that can end up in our environment through litter, windblown debris, and overflowing trash cans; and

WHEREAS, to increase awareness in our community of the simple decisions we can all make to reduce waste; and

WHEREAS, to allow customers to make a choice regarding whether or not they want a straw for their beverage; and

WHEREAS, this Ordinance reflects the zero waste goals and strategies outlined in the 2013 Integrated Waste Management Plan, approved by City Council in July, 2013.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Section 17.03 shall be added to the City of Davis Municipal Code as follows:

ARTICLE 17.03 BEVERAGE STRAWS

17.03.010 Definitions.

17.03.010 Beverage Straws Upon Request

17.03.020 Exemptions

17.03.030 Penalties

17.03.010 Definitions.

For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "Beverage Straw" means a tube for transferring a beverage from its container to the mouth of the drinker.
- (b) "Dine-In Customer" means a customer that orders and consumes Prepared Food on a Restaurant's premises.
- (c) "Fast Food Service" means food service establishments that serve food and/or beverages (1) via a drive-through; (2) in a packaged form for take-out/take-away; or (3) from stands or kiosks which provide no shelter or seating for customers.
- (d) "Person" means an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, including a government corporation, partnership, or association.
- (e) "Prepared Food" means food or beverage prepared for consumption on the Restaurant's premises, using any cooking or food preparation technique.
- (f) "Restaurant" means any vendor located or providing food within the City of Davis which provides Prepared Food for public consumption on its premises.
- (g) "Single-Use" means a product that is designed to be only used one time in its same form by the customer, food vendor or other entity.
- (h) "Take-Out Food Orders" means prepared meals or other food or beverage items that a customer purchases at a Restaurant and intends to eat elsewhere.

17.03.010 Beverage Straws Upon Request

On and after September 1, 2017:

- (a) Restaurants shall ask each Dine-In Customer if the customer wants a Single-Use Beverage Straw before providing a Single Use Beverage Straw to the customer.

17.03.020 Exemptions

- (a) Fast Food Service and Take-Out Food Orders are exempt from this ordinance.

17.03.030 Penalties


- (a) Any Person violating any section of this article is guilty of an infraction. The first violation shall be subject to a fine not to exceed one hundred dollars (\$100). The second violation within a six-month period shall be subject to a fine not to exceed two hundred dollars (\$200), and not to exceed five hundred dollars (\$500) for the third and subsequent violations occurring within a one-year period.
- (b) The remedies provided herein shall be in addition to all other remedies authorized by law and the enumeration of certain remedies in this article shall not preclude the application of any other remedies not herein enumerated.
- (c) An administrative citation including associated fines may be issued for any violation of this article pursuant to Davis Municipal Code Chapter 1, Article 1.02.

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law.

SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

INTRODUCED on the 23rd day of May, 2017, and PASSED AND ADOPTED by the City Council of the City of Davis on this 6th day of June, 2017, by the following vote.

ATT EST :	AYES: Arnold, Frerichs, Lee, Swanson, Davis	
	NOES: None	
		R Mayor

obb Davis

Three steps to A Plastic-Free Encinitas

We're creating
a local solution to
a global problem.

Single-use plastics and foam products are polluting our oceans, harming fish and wildlife. These pollutants are entering our food chain and affecting our health! 91% of plastic isn't recycled.*



The City of Encinitas has identified plastic pollution as an environmental concern. It's the number one source of debris found at our local beaches during volunteer clean-ups! Plastic bottles, caps, straws, and utensils are polluting our waterways and beaches – and threatening our valuable local resources. Through a comprehensive plastics reduction initiative, proposed measures to eliminate this waste are being incorporated into a draft ordinance for future consideration by City Council.

1 Plastic Straws and Utensils

Distribution of Plastic Straws and Utensils:

- Upon request or upon offer by the food provider only – including fast food and takeout.
- Phased prohibition on the distribution of plastic straws.



2 Plastic Beverage Containers (at City facilities & events)

Prohibit distribution and sales:

- Plastic bottled beverages (less than 1 liter in size) on City property and at City-sponsored events



3 Expanded Polystyrene (a.k.a. Foam or EPS)

Prohibit distribution and sales:

- Food service ware
- Egg cartons and food trays
- Products not encased in hard plastic
 - Examples include coolers, ice chests, or similar containers



Encinitas Plastics Initiative Phasing Plan

Context

This document lays out the phased approach to achieve the goals of the City of Encinitas' Plastics Initiative. The heart of the problem is the convenience of the disposable economy: products designed to be used once and then discarded. This issue is compounded by the unrecyclable nature of most of the products targeted by the Encinitas Plastics Initiative. Plastic straws, utensils, and stirrers are not able to be recycled in the waste streams available to City of Encinitas' constituents. Single-use plastic water bottles are recyclable; however, less than 30% are actually recycled into new products due to problems with consumer sorting and disposal, market availability, and collections and recycling economics.

To be effective in removing difficult to recycle single-use plastics, one of the biggest contributors to marine debris in Encinitas, the following will be needed:

- Restrictive ordinances
- Constituent awareness and education programs
- Phased implementation plans

Goal

The City aims to manage solid waste with the ultimate goal of achieving a zero-waste future. Toward that vision, the purpose of the Encinitas Plastics Initiative is to achieve a city and coastline free of unsightly and harmful plastic service ware debris, specifically tackling straws, utensils, and stirrers. (For simplicity, stirrers will be considered a type of utensil in this document.) In addition to these products, single-use plastic beverage containers and expanded polystyrene (EPS) containers will be addressed in this Initiative.

This document outlines the recommended phased implementation plan of the plastics initiative to minimize and eventually eliminate the distribution, sale, and use of these products in the City of Encinitas.

Phased Steps

A phased approach to implementation is recommended in order to achieve the goals of the Encinitas Plastics Initiative. A measured rollout by product type and by degree of restriction will ease in the changes. Specifically, the suggested phased timing will ensure:

- a runway to build community awareness and support,
- businesses have sufficient time to consider alternatives and adapt, and
- identification of the best alternative products.



Each phase focuses on different product-types. The recommended phases are:

Phase 1 – target plastic straws and utensils

Phase 2 – target plastic beverage containers at City facilities and events

Phase 3 – target retail sales of items in **Phases 1 and 2** as well as EPS products

Further details on the timing of each phase and adoption sequencing is provided in the following sections of this document.

General Approach for Each Phase

Each of the following tasks should be considered for each of the three phases outlined above.

1. **Create alternatives list.** A concise alternative list will be compiled to provide businesses an implementation tool in their transition from plastic single-use products to environmentally-preferable options. Each product list will be formulated considering customer usability requirements, environmental footprint considerations, and cost concerns.
2. **Solicit stakeholder input.** In keeping with being mindful and sensitive in addressing change, feedback will be solicited from consumers, food providers, retailers, industry associations, and applicable stakeholders. The methods for collecting feedback may include a wide variety of options from in-person visits, phone calls and emails, surveys and community events.
3. **Quantify use of items in City.** Each phase should include an understanding of the degree of these products' use in Encinitas. Where possible and feasible, a baseline will be gathered by surveying food providers and retailers, researching generally-accepted metrics, and working with EDCO to establish baseline recycling rates. High-level estimates will be quantified using basic assumptions on customer and business usage.
4. **Implement policy change.** Once information has been gathered and change options have been communicated, the stage is set for the City to rollout and implement policy change to have the intended impact.
5. **Work one-on-one with businesses.** Support will be provided to businesses that need extra help in making the transition to plastic-free alternatives. Guidance will be provided via emails, phone calls and in-person visits as needed. Collaboration will also be established with interested early adopter businesses to identify pain-points and challenges and develop solutions that can be shared with the larger business community.



Stakeholders

The purpose of stakeholder engagement is to build awareness, provide information, and collect feedback about single-use plastics as an environmental issue and the impact of potential regulations on their sale and distribution.

Key Stakeholders

PHASE 1 (Straws and Utensils)	PHASE 2 (Beverage Containers)	PHASE 3 (Retail Sale EPS, Plastic Utensils, & Plastic Straws)
<ul style="list-style-type: none"> • EDCO • Encinitas food providers • California Restaurant Association • California Grocers Association 	<ul style="list-style-type: none"> • City Parks & Rec • City Facilities • American Beverage Association 	<ul style="list-style-type: none"> • California Grocers Association • Encinitas consumers

In addition, the following groups must be apprised of the requirements at each phase.

Encinitas business associations

- Encinitas Chamber of Commerce
- Encinitas Mainstreet
- Cardiff Mainstreet
- Leucadia Mainstreet

Environmental nonprofit organizations

- Surfrider
- Coastkeeper
- ILACSD
- Nature Collective
- 5 Gyres



Plastics Initiative Timeline

The following table presents the proposed sequencing of policy development, adoption, and implementation according to product type.

	PHASE 1		PHASE 2	PHASE 3
	Straws	Utensils	Beverage Containers at City Facilities & Events	Retail Sale of EPS, Plastic Straws & Plastic Utensil
City Actions Timeline				
Ordinance Introduction	Dec. 18, 2019	Dec. 18, 2019	February 2020	April 2020
Ordinance Adoption	Jan 22, 2020	Jan 22, 2020	March 2020	May 2020
Ordinance Effective Date	Feb. 22, 2020	Feb. 22, 2020	April 2020	June 2020
Ordinance Operative Date	Feb. 22, 2020 (Upon Request) August 1, 2020 (Plastic Prohibited)	Feb. 22, 2020	September 2020	October 2020



Anticipated Challenges

For each proposed phase of the plastics initiative, it is important to recognize and anticipate the variety of challenges or constraints that exist or may evolve through policy development and implementation. The table below provides a summary of identified challenges and proposed solutions that may be considered through the progression of the plastics initiative.

Challenges	Solutions
<p>PRODUCT RESEARCH: Alternative utensils are not conventionally recyclable.</p>	<p>Recognizing that the landscape of available products and disposal options shifts with time, an Alternative Products List will be created to provide options for businesses. While the options for utensils are not readily clear, important relationships with recyclers and product distributors have been established to help find the best answers in the current environment.</p>
<p>DISPOSAL RESEARCH: Disposal options change over time and may be impacted by the City's priorities and time horizon.</p>	<p>Current and future disposal options for single-use and reusable items, as provided by waste management operators, will be identified aiming to emphasize those materials acceptable for AD.</p>
<p>COMMUNITY OUTREACH: All stakeholders must be alerted to pending regulation and given opportunity for input.</p>	<p>Through previous work with food providers on the EPS food service ware program in particular, the City recognizes the importance of soliciting input from organizations and businesses likely to be both for and against the Plastics Initiative, and create relevant resources to help businesses envision a smooth transition.</p>
<p>BUSINESS SUPPORT: Many food providers will be reluctant to change.</p>	<p>The City wants to be mindful and sensitive to the difficulty of change for the City's businesses, both food providers and retailers. The City continues to support local establishments with waste reduction and diversion guidance and options. Through this work as well as electronic and universal waste programs, heavily used by local businesses, there is an established connection with local businesses that should serve to address and assuage concerns.</p>
<p>REGIONAL INCONSISTENCY: North County Coastal region has uneven regulations.</p>	<p>Some neighboring cities have already adopted plastic-free ordinances while others are not yet considering change. Inconsistency in distribution and sale of food service ware products across jurisdictions could lead to confusion and even business disadvantages. However, this concern has not been borne out by past initiatives. Also, the changes proposed align with the direction being set by the state and therefore are expected to become the norm.</p>
<p>FUTURE MATERIALS ELIMINATION: It will be important to build on the momentum created with this proposed changes.</p>	<p>Examples of future products to target for elimination include food trays packaged outside City and EPS packing peanuts. The City will remain current on initiatives and legislation in other California cities and at state level to identify trends and learn from others.</p>



Relevant State Legislation

As the Encinitas Plastics Initiative develops, it will also be important to monitor emerging State legislation that may either support or preempt local policy, including the following:

- SB 1335 – Sustainable Food Packaging at State Parks, Beaches, & Facilities (2018)
 - disposable food packaging provided at state facilities must be recyclable or compostable
- SB 54 & AB 1080 - Single-Use Plastic Waste (2019)
 - source reduce or recycle 75% of single-use plastic packing and products by 2030
 - all single-use products must be recyclable or compostable by 2030
- AB 619 – Bring-Your-Own Reusable Food and Beverage Containers (proposed)
 - allows use of reusable containers at restaurants and events



ORDINANCE NO. 2019-30
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS AMENDING
CHAPTER 11.27 OF THE ENCINITAS MUNICIPAL CODE PROHIBITING THE USE
AND DISTRIBUTION OF EXPANDED POLYSTYRENE FOOD SERVICE WARE,
PLASTIC UTENSILS, AND BEVERAGE STRAWS

WHEREAS, the City of Encinitas has engaged in ongoing efforts to reduce or limit products that are harmful to the environment;

WHEREAS, the City of Encinitas has a long history of environmental stewardship and planning for a sustainable future;

WHEREAS, this ordinance aims to support the City of Encinitas' Climate Action Plan since single-use plastics contribute to greenhouse gas (GHG) emissions via materials extractions, product production and waste disposal, and without action, global production is projected to triple and GHG emissions from plastics would reach fifteen percent (15%) of the global carbon budget by 2050;

WHEREAS, the purpose of this ordinance is to encourage the use of ocean-friendly products that do not have a detrimental effect on the natural environment or character of the community;

WHEREAS, plastics break down into ever smaller pieces through photo-, physical, and biological degradation processes, and these smaller pieces persist in the environment for hundreds of years and can enter into the food chain when animals ingest these pieces believing they are food, and harmful chemicals associated with plastics can also leach into soils and water;

WHEREAS, approximately eighty percent (80%) of all refuse that ends up in the oceans comes from the land;

WHEREAS, refuse found and collected along San Diego County coasts is primarily composed of plastics. The San Diego Coastkeeper reports that in 2018, fifty-three percent (53%) of debris collected was plastic. Many of the plastics collected were pieces less than one inch in diameter, and much of it was polystyrene foam;

WHEREAS, there are few facilities in the State of California that recycle polystyrene or are able to do so only if there is a demand and the product is wiped clean of all food debris;

WHEREAS, many local environmental groups are encouraging local government to limit or ban the use of polystyrene and single-use plastics in their jurisdictions;

WHEREAS, the California Coastal Commission has developed "A Plan of Action from The Plastic Debris Project" in 2006, which was funded by the State Water Resources Control Board, and that Plan recommends that local government impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris;

WHEREAS, both houses of the California State Legislature have acknowledged the

worldwide environmental devastation and health problems wrought by plastic and non-recycled trash and are considering Senate Bill 54 and Assembly Bill 1080, together known as the California Circular Economy and Plastic Pollution Reduction Act in an attempt to dramatically reduce plastic and packaging waste and jump start the in-state clean recycling economy;

WHEREAS, the California Circular Economy and Plastic Pollution Reduction Act sets a goal of an overall reduction of single-use plastic containers by seventy-five percent (75%) by the year 2030;

WHEREAS, the City Council finds that because the City of Encinitas is a coastal community, the City has the opportunity to reduce the amount of plastics that end up in the ocean and has its police powers to assist with that goal;

WHEREAS, the regulation of single-use disposable items within the City is an action that reduces the amount of anthropogenic debris that ends up on the beach;

WHEREAS, the City of Encinitas previously took action to prohibit single-use carry-out bags and food providers from dispensing prepared food to customers in disposable food service ware made from expanded polystyrene; and

WHEREAS, this Ordinance amends Chapter 11.27 of the Encinitas Municipal Code to provide for expanded prohibitions on the use and distribution of single-use materials that pollute the environment and ocean.

NOW, THEREFORE, the City Council of the City of Encinitas, California, does ordain as follows:

SECTION 1. All of the above statements are true; and

SECTION 2. Chapter 11.27 of Title 11 of the Encinitas Municipal Code is hereby amended to read as follows (the strikethrough text represents deleted language and the underlined text represents new language):

CHAPTER 11.27
PROHIBITION ON THE USE AND DISTRIBUTION OF
EXPANDED POLYSTYRENE FOOD SERVICE WARE, PLASTIC UTENSILS, AND
BEVERAGE STRAWS
~~**DISPOSABLE FOOD SERVICE WARE**~~

11.27.010 Title. This Chapter shall be known as the “City of Encinitas Expanded Polystyrene Disposable Food Service Ware, Plastic Utensil, and Beverage Straw Prohibition Ordinance”.

11.27.020 Purpose and Intent. The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures, and promote environmentally sustainable practices throughout the City by prohibiting the use and distribution of Expanded Polystyrene Disposable Food Service Ware, Plastic Utensils, and Beverage Straws by Food Providers within the City of Encinitas.

11.27.030 Definitions. For purposes of this Chapter only, the terms below have the following meaning:

“Beverage Straw” means any straw or tube used for transferring a beverage from its container to the mouth of the drinker.

“City” means the City of Encinitas.

“City Facility” means any building, structure, property, park, open space, or vehicle, owned, leased or operated by the City, its agents, agencies, departments or franchisees.

“City Contractor” means any person that enters into an agreement with the City to furnish products or services to or for the City.

“City-Sponsored Event” means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

“Customer” means any person obtaining Prepared Food from a Restaurant or Food Provider.

“Disposable Food Service Ware” or “Disposables” means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single use disposable straws, cup lids, and utensils.

“Distribute” means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

“Event” means an organized recreational activity that includes 25 or more participants.

“Expanded Polystyrene” or “EPS” means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam. EPS is sometimes called “Styrofoam”, a Dow Chemical Co. trademark form of polystyrene foam insulation.

“Food Provider” means any Person or establishment that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

“Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

“Plastic Utensil” means fork, spoon, knife or stirrer, or other eating implement made predominately of plastic derived from either petroleum or a biologically based polymer.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.

“Prepared Food” means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider’s premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets and other food vendors.

“Restaurant” means any person or establishment doing business within the City of Encinitas that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle. “Restaurant” for the purposes of this Chapter, includes mobile food preparation units.

11.27.040 Prohibition of Expanded Polystyrene Food Service Wares.

A. ~~Except as provided by Section 11.27.050,~~ Food Providers are prohibited from providing Prepared Food in Disposable Food Service Ware made of EPS.

B. ~~Except as provided in Section 11.27.050,~~ all City Facilities, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchisees, contractors, and vendors doing business with the City are prohibited from using Disposable Food Service Ware made of EPS within the City.

11.27.050 Exemptions Distribution of Plastic Utensils

~~Notwithstanding the requirements contained in Section 11.27.040,~~

~~A.—The following are exempt from the provisions of this chapter:~~

~~1.—Food prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.~~

~~2.—Food provided by school districts under its official food service program.~~

~~B.—Food providers that are obligated to purchase or have purchased EPS food service ware under a contract entered into within the year prior to the operative date of the ordinance codified in this chapter are exempt from the provisions of this chapter for six months following its operative date.~~

~~C.—The City Manager or designee may exempt any food provider or person from the requirements of this chapter for a one-year period, upon written request by applicant that the conditions of the chapter would cause an undue hardship following the operative date of the ordinance codified in this chapter, as follows:~~

~~1.—A request for an exemption shall be filed in writing with the City Manager or designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to make the required determinations.~~

~~2.—The City Manager or designee may approve the exemption for a maximum of one year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include, but not be limited to, situations where:~~

~~a.—There are no reasonable alternatives to expanded polystyrene food service ware for reasons that are unique to the applicant; or~~

~~b.—Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.~~

~~3.—The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application. (Ord. 2016-12)~~

A. A Food Provider may only Distribute Plastic Utensils upon request by the Customer or upon offer to the Customer by the Food Provider. This provision shall apply to takeout and drive-thru orders.

B. A Food Provider may have Plastic Utensils available for customers at locations within the Restaurant.

C. City Facilities, City-managed concessions, City-sponsored or co-sponsored events, and all franchisees, contractors, and vendors doing business with the City are prohibited from Distributing Plastic Utensils.

D. Effective August 1, 2020, City permitted special events on City property are prohibited from Distributing Plastic Utensils.

11.27.060 Enforcement Distribution of Beverage Straws

~~A.—Any violation of this chapter shall be enforced through the administrative citation program set forth in Chapter 1.08 of the Encinitas Municipal Code.~~

~~B.—Each violation of this chapter shall be considered a separate offense.~~

~~C.—The remedies and penalties provided in this chapter are cumulative and not exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.~~

~~D.—In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.08 of this Code. (Ord. 2016-12)~~

A. A Food Provider may only Distribute Beverage Straws upon request by the Customer or upon offer to the Customer by the Food Provider. This provision shall apply to takeout and drive-thru orders.

B. Effective August 1, 2020, Food Providers are prohibited from the Distribution of Beverage Straws made of plastic.

C. City Facilities, City-managed concessions, City-sponsored or co-sponsored events, and all franchisees, contractors, and vendors doing business with the City are prohibited from the Distribution of Beverage Straws made of plastic.

D. Effective August 1, 2020, City permitted special events on City property and all franchisees, contractors, and vendors doing business with the City are prohibited from the Distribution of Beverage Straws made of plastic.

11.27.070 Administrative Remedies Exemptions.

~~A.—Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.~~

~~B.—Upon a first violation of any provision of this chapter, the City Manager or designee shall issue a written warning notice of violation to the offending retail establishment. The warning~~

~~notice of violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or designee may issue an administrative citation assessing fines in accordance with this section.~~

~~C.— Each separate violation following the issuance of a warning notice of violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:~~

~~1.— A fine not exceeding \$100.00 for the first violation following the issuance of a warning notice.~~

~~2.— A fine not exceeding \$200.00 for the second violation following the issuance of a warning notice.~~

~~3.— A fine not exceeding \$1,000.00 for each additional violations that occurs following the issuance of a warning notice.~~

~~D.— Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in Section 1.08.080, Administrative citations, of the Encinitas Municipal Code, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter. (Ord. 2016-12)~~

Notwithstanding the requirements contained in Section 11.27.040, 11.27.050, and 11.27.060,

A. The following are exempt from the provisions of this chapter:

1. Food and/or products prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
2. Food provided by School Districts under its official food service program.
3. Food, Plastic Utensils, or Beverage Straws brought by individuals for personal consumption or use to City Facilities, including but not limited to City parks and the beach, provided the City Facility is being used for individual recreation or similar purposes and such facility use is not part of an Event.
4. Notwithstanding any other provision of this Article, and in recognition that straws and other utensils may provide basic accommodation for persons with disabilities or medical conditions to eat or drink, Food or Beverage Establishments in the City of Encinitas must provide a Single-Use Plastic Straw upon request to any consumer who requires the use of same due to a disability or medical condition. Nothing in this Chapter shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single use plastic straws to individuals who may require and request the use of single-use plastic straws.

4. Public Health and Safety. The City Manager may exempt a food provider or beverage provider when there is a public health and safety requirement or medical necessity to use the product.
5. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter.

B. The City Manager or his/her designee may exempt any Food Provider or Person from the requirements of this Chapter for a one-year period, upon written request by applicant that the conditions of the Chapter would cause an Undue Hardship following the operative date of this ordinance, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to make the required determinations.
2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:
 - a. There are no reasonable alternatives to Expanded Polystyrene Food Service Ware for reasons that are unique to the applicant; or
 - b. Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
3. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

11.27.075 No Conflict with Federal or State Law.

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.27.080 ~~Operative Date Enforcement.~~

~~A.— This chapter shall become operative as to all food providers within six months after the effective date of the ordinance codified in this chapter.~~

~~B.— Within 15 days of the date of adoption of the ordinance codified in this chapter, the City Clerk shall post a copy of said ordinance in places designated for such posting and shall certify to the~~

~~same. The City Clerk shall certify the passage of the ordinance codified in this chapter and shall cause the same to be published as required by law. (Ord. 2016-12)~~

A. Any violation of this Chapter shall be enforced through the Administrative Citation Program set forth in Chapter 1.08 of the Encinitas Municipal Code.

B. Each violation of this chapter shall be considered a separate offense.

C. The remedies and penalties provided in this chapter are cumulative and not exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.

D. In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.08 of this Code.

11.27.090 Severability Administrative Remedies.

~~If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter. The City Council hereby declares that it would have adopted the ordinance codified in this chapter and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this chapter irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional. To this end, the provisions of this chapter are declared severable. (Ord. 2016-12)~~

A. Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

B. Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

C. Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:

1. A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
2. A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.

3. A fine not exceeding five hundred (\$500) for each additional violation that occurs following the issuance of a warning notice.

D. Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.08.080 of the Encinitas Municipal Code, Administrative Citations, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

11.27.100 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.27.110 Operative Date.

A. This Ordinance shall become operative upon the effective date.

B. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

11.27.120 Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061 (b)(3) because there is no possibility that the activity in question may have a significant effect on the environment. Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California held on the ____ day of ____ 2019, and thereafter,

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, on the ____ day of ____ 2019, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

CATHERINE S. BLAKESPEAR, Mayor

Approved as to form:

Attest:

LESLIE E. DEVANEY, City Attorney

Kathy Hollywood, City Clerk