



**Contra  
Costa  
County**

To: Board of Supervisors  
From: Brian M. Balbas, Public Works Director/Chief Engineer  
Date: September 24, 2019

Subject: Ordinance regulating polystyrene-based food service ware in unincorporated Contra Costa County. Project No. 7517-6W7086

**RECOMMENDATION(S):**

INTRODUCE Ordinance No. 2019-25 regulating polystyrene-based food service ware in unincorporated Contra Costa County; WAIVE reading; and FIX October 8, 2019, for adoption.

**FISCAL IMPACT:**

The annual cost to enforce Ordinance No. 2019-25 is estimated to be \$25,000. These costs will be paid with Stormwater Utility Assessment funds.

**BACKGROUND:**

The Transportation, Water and Infrastructure Committee (TWI Committee) first heard this item on November 8, 2018. That meeting provided the public an opportunity to give the County comments on whether or not to ban polystyrene food and beverage containers, and if so, what types of products should be banned. On December 4, 2018, the Board of Supervisors considered a TWI Committee recommendation to adopt an ordinance banning polystyrene food and beverage containers and the extent of the ban. The Board considered the recommendation and expanded the ban to include not only the use of, but also the sale of polystyrene food and beverage containers. The Board then directed staff to prepare an

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **09/24/2019** ☒ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

See Addendum

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 24, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Michele Mancuso,  
(925) 313-2236

By: June McHuen, Deputy

ordinance to implement that ban on polystyrene food service ware. The TWI Committee reviewed the ordinance at its August 12, 2019, meeting and recommended its adoption by the Board.

## BACKGROUND: (CONT'D)

Ordinance No. 2019-25. Ordinance No. 2019-25 includes the following provisions:

- The ordinance prohibits food vendors (e.g., restaurants, fast food or take-out services, food trucks, and other businesses that sell food or beverages) in the unincorporated County from using polystyrene food and beverage containers beginning May 1, 2020.
- The ordinance requires food vendors in the unincorporated County to use environmentally friendly food and beverage containers.
- The ordinance prohibits the sale of polystyrene food and beverage containers in the unincorporated County beginning May 1, 2020.
- Prepackaged food items, raw meat trays, and reusable polystyrene ice chests and coolers are exempt.
- Leases and rental agreements for County-owned facilities may require the use of environmentally friendly food service ware. Contracts with County vendors and service providers may require the use of environmentally friendly food service ware in connection with services performed for the County.
- The ordinance includes a process for food vendors to request that the Public Works Director issue a one-year hardship exemption under limited circumstances.

An Administrative Bulletin, which will provide guidance and procedures to implement the ordinance within County departments, is currently being prepared. The Administrative Bulletin would prohibit the use of polystyrene-based food service ware by County departments.

Outreach. Before the TWI Committee meeting on August 12, 2019, staff expanded the outreach mailing list for this project to include over 450 businesses and impacted parties, including representative associations and other parties of interest, like the Restaurant Association, chambers of commerce, and recyclers or recovery businesses. On July 15, 2019, a letter was sent to all parties on the outreach mailing list informing them of the proposed polystyrene ban. The letter included a caption in both Spanish and Chinese that directed them to a website with more information. The website includes text of the letter in English with a button that takes the reader to a translated version of the text into either Spanish or Chinese. The ordinance is also on the website in English, Spanish, and Chinese. The letter requested comments on the ordinance and informed them of the opportunity to express their concerns in person at the TWI Committee meeting on August 12, 2019. There was no public comment at the TWI Committee meeting. A similar letter was subsequently sent to all parties on the outreach mailing list informing them of the Board meeting on September 24, 2019, and the opportunity to submit comments by mail, by e-mail, or by phone, or to comment in person at the Board meeting.

Comments on the Draft Ordinance. Three comments were received after mailing the July 15, 2019, notice/letter. The first comment was from a restaurant in Port Costa that supports the County's effort to ban polystyrene food and beverage containers. The restaurant currently uses only compostable to-go containers. The second set of comments

was from the Sustainability Commission. They questioned whether polystyrene raw meat trays were exempt. This was the intent, but it was not clear in the ordinance, so the ordinance was modified to explicitly exempt raw meat trays. The Sustainability Commission's other comments were the same as those expressed by the third and last set of comments, an e-mail from Howdy Goudey (attached) wherein he makes the following four points:

- **Compostable Products.** Mr. Goudey urges the Board to include compostable products in the definition of “environmentally-friendly food service ware.”
- **Define Compostable.** Mr. Goudey suggests including a definition for compostable products as those products accepted by the processors providing service to unincorporated County communities.
- **County Facilities.** Mr. Goudey suggests that County facilities “shall” use alternatives to polystyrene food and beverage containers rather than “may” use alternative materials. This is not the recommendation that was made by the TWI Committee. However, if the Board desires to revise the ordinance in response to this comment, Section 418-18.006 could be modified to provide that leases and rental agreements, and County services contracts, entered into on or after May 1, 2020, “shall” require lessees and contractors to use environmentally-friendly food service ware. If the Board wants to allow exceptions where the County determines a lessee or contractor would experience a hardship, Section 418-18.006 could be modified to allow for those exceptions.
- **Reusable Products.** Mr. Goudey suggests the ordinance emphasize the use of reusable products is preferred and recommended over single-use products.

The issue of compostable products is complicated and revolves around timing. This was discussed at the first TWI Committee meeting on November 8, 2018, and the excerpt of the staff report related to compostable materials is included here for additional background as follows:

**Compostable Materials.** Initially staff recommended the alternative materials allowed would not include compostable products. This was due to concerns expressed by County staff knowledgeable about the recycling industry and the services and facilities available locally to manage compostable materials. At their August 27, 2018, meeting, the Sustainability Commission advocated for including compostable materials as an alternative to polystyrene. They felt it would still be better to have compostable materials in the landfill than alternative plastic materials. In fact, it is worse to have compostable materials end up in the landfill, because compostable materials would generate more greenhouse gas emissions than landfilling recyclable plastic. Staff continues to recommend not including compostable materials as an alternative to polystyrene at this time, for several reasons:

- Only some of the incorporated and unincorporated areas of the County currently have separate collection service for food waste or food contaminated compostable materials, so it is premature to require businesses in unincorporated areas to package food in

compostable "To Go" containers.

- The County only has authority over the Franchise Agreements that govern collection provided to approximately 53% of the population living in unincorporated areas, so the County cannot require consistent recycle and compostable collection services. For consistent service, the County will need cooperation from the Special Districts or Joint Powers Authority having authority over the collection franchises governing services provided to the remaining unincorporated areas (47%).

- New regulations are being developed in response to recent changes in State law that will impose substantial new requirements related to recovery and composting of organics in the waste stream. It is critical that the County not take an action mandating increased generation of compostable waste without first ensuring there is sufficient composting capacity to manage food waste and other compostable items already present in our waste stream.

- Some compostable products look very similar to plastic and cannot be distinguished by the public, making proper sorting at the customer level problematic. This same challenge is also problematic for composting facility operators, and when in doubt, the material will be disposed of and not composted. At a minimum, it makes the sorting process more complex and time-consuming. If sorting costs increase, recyclers are likely to either raise rates or refuse to accept compostable food waste materials. Refusal to accept compostable materials would result in an increase in the waste stream to and methane emissions from our landfills.

Our goal is to roll out an easy to understand and easy to implement program. Adding compostable materials at this time would create confusion and increase complexity. Senate Bill 1383 (2016) requires a 50% reduction in organic waste going to landfills by 2020 and a 75% reduction by 2025. The objective of these reduction targets is to reduce methane emissions from landfills. Including compostable products as an alternative material for food and beverage containers would increase the amount of organic waste generated, making it harder to achieve these reduction targets as some of this waste would likely end up in landfills.

Not all compostable products are the same. Plastic-based compostable products do not break down fast enough for commercial composting and can get confused with other non-compostable plastics that then contaminate the composting operation. Paper-based products are compatible with commercial composting operations. Compostable grade plastic and paper food-ware both go in green-waste containers as compostable products. Recyclable plastic food-ware goes into recycle containers.

The real challenge to recovering these materials is food remnants that contaminate food-ware materials. Wholesale buyers of recycled materials have been requiring a much higher quality product. This in turn means that food residue on recyclable plastic food-ware products must be washed off to be accepted at recycling facilities. Unwashed

recyclable plastic food-ware is diverted to the landfill. Therefore, it is ultimately up to consumers to clean their food laden recyclable plastic food-ware if the County is to reach its goal of reducing landfill disposal.

Composting has numerous benefits, including water conservation, improved soil health, and carbon sequestration. Staff recommends the ordinance be amended in the future to include compostable materials, once the County and local cities have compostable material collection programs in place. It will also be important for the County to verify there is adequate composting facility capacity to manage the additional material and obtain confirmation from the operator that the alternative compostable materials that would be required will actually be composted locally.

Another potential option for the proposed ban of polystyrene food and beverage containers, not recommended by staff, is to include a compostable provision that only allows paper-based products. At a minimum, the County should consult with the composting facility operator to confirm the facility would in fact compost the paper-based products that would be required by the ordinance. If the TWI Committee chooses to include compostable products as an alternative material, then staff recommends the ordinance not specify the inclusion of compostable materials, but also not preclude the use of compostable materials. Instead, businesses will be informed of what alternative materials are acceptable by County staff during the implementation phase of the polystyrene ban project. Initially, compostable products will not be listed as an acceptable material. In the board order approving the ordinance, staff would suggest specific prerequisite actions/milestones that would trigger when to include compostable products as an acceptable material. Suggested prerequisite actions/milestones would include determination that introduction of compostables would not negatively impact the County's compliance with SB 1383 regulations currently being developed by the State, assurance from local operators there is adequate capacity to handle the additional compostable materials, and there is uniform collection service throughout unincorporated communities accepting compostable food-ware materials (with food residue) in green-waste containers.

At the December 4, 2018, Board meeting, the TWI Committee report concluded the following recommendation for compostables:

Compostables. Do not include compostable products at this time.

- Conditional Adoption. If adding compostable products to the ordinance is considered, staff recommends the introduction of compostable products as an acceptable alternative material would occur after certain conditions are met, to be outlined in the board order adopting the ordinance:
  - Compatible with SB 1383 regulations
  - Adequate local compost operator capacity
  - Uniform compostable collection service

Ordinance Related Action Items. At the December 4, 2018, meeting, the Board directed staff to do the following:

- Letter to Cities and Towns. The Board asked staff to draft a letter to the cities and towns advising them of the County's proposed ordinance and the County's interest in having requirements throughout the County that are as consistent as possible. On January 10, 2019, two draft letters, one to Cities/Towns with an ordinance and one to Cities/Towns without an ordinance, were sent to each Board member for them to send to the Cities/Towns within their Supervisorial District. The letter indicated that County staff would be contacting the City/Town to discuss how they enforce their ordinance, if they have one, and if they have no ordinance asking if they had plans to adopt one.
- City/Town Report. The Board asked staff to find out if Cities/Towns without an ordinance had plans to adopt one, and for those Cities/Towns that have an ordinance, how they enforce their ordinance. Staff contacted the Cities/Towns that currently do not have a polystyrene ordinance (Antioch, Brentwood, Clayton, Danville, Moraga, Oakley, Orinda, Pleasant Hill, and San Ramon) and asked if they have plans to adopt an ordinance banning Styrofoam food and beverage containers. None of the cities that responded are planning to adopt an ordinance, some due to limited staff resources and some relying instead on a statewide ban. In a couple of cities, staff is supportive of a ban, but the idea has not gained traction. Staff also contacted the Cities/Towns that currently have a polystyrene ordinance (Concord, El Cerrito, Hercules, Lafayette, Martinez, Pinole, Pittsburg, Richmond, San Pablo, and Walnut Creek) and asked how they enforce their ordinance. Enforcement is either through a complaint driven program where citizen complaints trigger an inspection, or an inspection program that systematically inspects businesses for compliance. A few City/Town enforcement programs are complaint driven, but most ordinances are enforced through a formal inspection program, and most businesses readily comply after the first warning. Some enforcement programs are being changed from inspection to complaint driven because the rate of compliance is very high.
- Public Service Announcement. The Board asked staff to prepare a public service announcement explaining why the ban of polystyrene food and beverage containers is needed to protect wildlife and prevent pollution of our waterways. Staff worked with the Office of Communications and Media to develop a public service announcement, which will be shown at the Board of Supervisors meeting.

It should be noted that a specific exemption for raw meat trays was added to the ordinance after the TWI Committee meeting. The intent was always to exempt polystyrene raw meat trays. The Sustainability Commission, in their review, questioned whether the ordinance as written in fact exempted raw meat trays, so the ordinance was modified to include an explicit exemption.

Staff recommends introducing Ordinance 2019-25, waiving reading, and fixing October 8, 2019, for adoption. Staff also recommends that the Board consider any public

comments on the ordinance that will be considered for approval at the October 8, 2019, Board meeting.

**CONSEQUENCE OF NEGATIVE ACTION:**

If Ordinance No. 2019-25 is not introduced, it cannot be considered for adoption by the Board of Supervisors.

**CLERK'S ADDENDUM**

***Speakers: Howdy Goudey, resident of Contra Costa County. INTRODUCED Ordinance No. 2019-25 regulating polystyrene-based food service ware in unincorporated Contra Costa County, WAIVED the reading; and FIXED October 8, 2019, for adoption; and DIRECTED Public Works to return to the Board in December 2020 with a report on progress.***

**ATTACHMENTS**

Ordinance No. 2019-25

Comments on Polystyrene Ban Ordinance

Findings