

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: June 2, 2017

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee

FROM: Sharon M. Tso  Chief Legislative Analyst Council File No.: 17-0002-S73  
Assignment No.: 17-05-0515

SUBJECT: Resolution to SUPPORT SB 705 (Allen) Related to Polystyrene Food Service Containers.

CLA RECOMMENDATION: Adopt Resolution (Koretz – Blumenfield - Huizar) to include in the City's 2017-18 State Legislative Program SUPPORT for SB 705 (Allen) which prohibit food providers from dispensing prepared food to a customer in an expanded polystyrene food service container on and after January 1, 2020.

## SUMMARY

The Resolution (Koretz – Blumenfield - Huizar), introduced on May 3, 2017, states that expanded polystyrene foam, known as Styrofoam, is present in the marine and beach environment. The City of Los Angeles has set a zero waste goal for its new commercial waste-hauling system and does not accept food-contaminated expanded polystyrene food packaging as recycling. The Motion indicates that the removal of expanded polystyrene containers from the waste stream will protect human health and reduce costs to local governments for litter prevention, clean-up, and disposal.

Currently pending in the Legislature, is SB 705 (Allen) which would prohibit food providers from dispensing prepared food to a customer in an expanded polystyrene food service container on and after January 1, 2020. According to the Motion, it is important to create a statewide policy regarding this form of litter and marine pollution.

The Resolution recommends that the City support SB 705.

## BACKGROUND

The Centers for Disease Control (CDC) states that styrene is a colorless liquid that evaporates easily and is commonly used in the United States to make plastics and rubber. Styrene that is chemically linked together in long chains is known as polystyrene. Consumer products containing polystyrene include packaging materials, electrical insulation, insulation for homes, and food containers. In a report dated June 10, 2011, the Department of Health and Human Services noted that styrene is “reasonably anticipated to be a human carcinogen.”

On and after January 1, 2020, SB 705 would prohibit chain establishments from dispensing prepared food to a customer in an expanded polystyrene food service container. Other vendors would be subject to the ban on January 1, 2022. State hospitals, correctional facilities, and K-12 school facilities are exempt. A city or county may grant an exemption to a food vendor who demonstrates that the ban will impose an undue economic hardship. The bill also requires the California Department of Resources Recycling and Recovery to post information about the prohibition on its website. The legislation does not preempt the authority of local governments to

adopt additional single-use take-out food packaging ordinances, regulations, or policies that are more restrictive than SB 705.

SB 705 is supported by various organizations, including the following: California League of Conservation Voters, the City of Santa Monica, Pacoima Beautiful, and Sierra Club California. The bill is opposed by the California Chamber of Commerce, California Restaurant Association, California Retailers Association, California Restaurant Association, and others.

The Bureau of Sanitation (BOS) currently accepts clean polystyrene containers in blue bins as part of its Citywide Curbside Recycling Program, but does not currently recycle polystyrene containers that have been contaminated with food. BOS supports SB 705 and states that the bill would establish a uniform statewide policy concerning the prohibition of polystyrene take-out food containers. BOS recommends that SB 705 include funding to enable cities to conduct outreach for businesses and residents on how to comply with the bill's requirements.

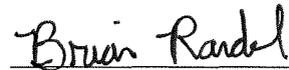
SB 705 is consistent with the City's efforts to reduce harmful litter in landfills, streams, waterways, and in public areas such as streets and parks.

#### DEPARTMENT NOTIFIED

Bureau of Sanitation

#### BILL STATUS

02/17/17	Introduced
03/13/17	Referred to the Committees on Environmental Safety and Appropriations
04/05/17	From Committee with author's amendments. Read second time and amended. Re-referred to Committee on Environmental Quality.
04/25/17	From Committee: Do pass as amended and re-refer to Committee on Appropriations.
05/04/17	Set for hearing May 15.
05/15/17	Placed in Appropriations suspense file.
05/26/17	From Committee: Do pass as amended (Ayes 5. Noes 2).
05/31/17	Read third time. Refused passage (Ayes 15. Noes 19).
05/31/17	Motion to reconsider made by Senator Allen.
05/31/17	Reconsideration granted (Ayes 40. Noes 0).



Brian Randol  
Analyst

Attachment: 1. Resolution  
2. Text of SB 705

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, expanded polystyrene foam (EPS), commonly known as Styrofoam, is pervasive in the marine and beach environment – like most plastics, polystyrene is lightweight and floats; and

WHEREAS, when littered, polystyrene foam is carried from streets and through storm drains out to the ocean – the environment, the containers break down into smaller and smaller pieces and are easily mistaken for food by marine animals; and

WHEREAS, because EPS food packaging is contaminated from food residue, recycling is virtually impossible – it takes decades or centuries for it to decompose in a landfill; and

WHEREAS, the City of Los Angeles has set a zero waste goal for its new commercial waste-hauling system and does NOT accept food-contaminated EPS food packaging as recycling; and

WHEREAS, compostable food service packaging allows institutional users to incorporate the packaging into new small-scale food composting collection systems without the labor and expense of separating the container from the food, and, if the material does find its way into the environment, it can reduce the negative impact on wildlife and storm drain systems; and

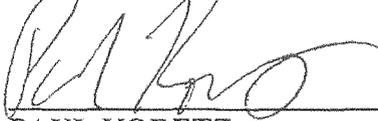
WHEREAS, the U.S. Department of Health and Human Services' National Toxicology Program has listed the Styrene in polystyrene as a "reasonably anticipated human carcinogen," stating that "a causal relationship between styrene exposures and cancer in humans is credible," and the report noted that "The presence of styrene in packaged foods is reported to be due primarily to monomer leaching from polystyrene containers," in particular noting that "Styrene was detected in all eight human breast milk samples from women in four US cities;" and

WHEREAS, the removal of EPS from the waste stream will not only protect human health, but reduce the cost to local governments for litter prevention, clean up, and disposal; and

WHEREAS, it is important to create a statewide policy and uniformity regarding this nuisance form of litter and marine pollution, particularly in a state whose world-renown beaches and coastline provide a significant amount of income from tourism dollars;

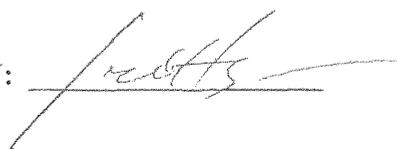
NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 State Legislative Program SUPPORT for SB-705 (Allen), which will prohibit food providers from dispensing prepared food to a customer in an expanded polystyrene food service container on and after January 1, 2020.

PRESENTED BY:

  
PAUL KORETZ  
Councilmember, 5<sup>th</sup> District

  
BOB BLUMENFELD  
Councilmember, 3<sup>rd</sup> District

SECONDED BY:



MAY 03 2017



ORIGINAL

AMENDED IN SENATE MAY 26, 2017  
AMENDED IN SENATE APRIL 26, 2017  
AMENDED IN SENATE APRIL 5, 2017

**SENATE BILL**

**No. 705**

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**Introduced by Senator Allen  
(Coauthors: Senators Hill and Stern)**

February 17, 2017

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An act to add Chapter 6.8 (commencing with Section 42398) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 705, as amended, Allen. Solid waste: expanded polystyrene food service containers.

Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria.

This bill would enact the Ocean Pollution Reduction Act of ~~2017~~, ~~which 2017~~. *The bill would prohibit a food provider, vendor, as defined, that is subject to specified federal requirements for the posting of calories and nutrients imposed upon restaurants and other retail food establishments, on and after January 1, 2020, from dispensing prepared food to a customer in an expanded polystyrene food service container. The bill would prohibit all food vendors from dispensing prepared food to a customer in an expanded polystyrene food service container on*

and after January 1, 2022. The bill would authorize a city or county to grant a food vendor an exemption from these prohibitions, as specified, upon request of the food vendor, if the food vendor demonstrates to the satisfaction of the city or county that compliance with the prohibition would impose an undue economic hardship, as defined. The bill would authorize a city, a county, a city and county, or the state to impose civil liability on a person or entity that knowingly violates that prohibition, or reasonably should have known that it was violating that prohibition, in the amount of \$1,000 per day for the first violation, \$2,000 per day for the ~~second~~ 2nd violation, and \$5,000 per day for the ~~third~~ 3rd and subsequent violations. The bill would require any civil penalties collected to be paid to the office that brought the action and would authorize these penalties, if collected by the Attorney General, to be expended, upon appropriation by the Legislature, to enforce that prohibition. The bill would require the Department of Resources Recycling and Recovery to develop an Internet Web page with information on how to comply with, and how to file a complaint for a violation of, that prohibition. The act would also define related terms.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 6.8 (commencing with Section 42398)  
2 is added to Part 3 of Division 30 of the Public Resources Code, to  
3 read:  
4  
5 CHAPTER 6.8. OCEAN POLLUTION REDUCTION ACT OF 2017  
6  
7 42398. This chapter shall be known, and may be cited, as the  
8 Ocean Pollution Reduction Act of 2017.  
9 42398.1. For the purposes of this chapter, the following terms  
10 have the following meanings:  
11 (a) "Expanded polystyrene food service container" means a  
12 single-use rigid container made primarily of expanded polystyrene  
13 and used in the restaurant and food service industry for serving or  
14 transporting prepared, ready-to-consume food or beverages,  
15 including, but not limited to, plates, cups, bowls, trays, and hinged  
16 containers. "Expanded polystyrene food service container" does  
17 not include packaging for unprepared foods.

1 (b) “Food-provider<sup>2</sup> vendor” means an establishment that  
2 provides prepared food for public consumption on or off its  
3 premises and includes, but is not limited to, a store, shop, sales  
4 outlet, restaurant, grocery store, supermarket, delicatessen, catering  
5 truck or vehicle, any other person who provides prepared food,  
6 and any organization, group, or individual that regularly provides  
7 food as a part of its services. “Food vendor” does not include any  
8 of the following:

9 (1) A facility run by the State Department of State Hospitals.

10 (2) A state or local correctional facility or institution, including,  
11 but not limited to, a state prison, county jail, facility of the Division  
12 of Juvenile Justice, or county- or city-operated juvenile detention  
13 facility, including a juvenile hall, camp, or school.

14 (3) A school campus, as defined in Section 49430 of the  
15 Education Code.

16 (c) “Prepared food” means a food or beverage prepared for  
17 consumption on or off a food-provider’s vendor’s premises, using  
18 any cooking or food preparation technique. “Prepared food” does  
19 not include raw or uncooked meat, fish, or eggs provided for  
20 consumption without further food preparation.

21 (d) “Undue economic hardship” means a situation in which a  
22 food vendor has no reasonable alternative to the expanded  
23 polystyrene food service containers in use by that food vendor and  
24 compliance with subdivision (a) of Section 42398.2 would cause  
25 significant economic hardship to that food vendor.

26 42398.2. (a) (1) On and after January 1, 2020, a food-provider  
27 vendor subject to Section 343(q)(5)(H) of Title 21 of the United  
28 States Code or to Section 114094 of the Health and Safety Code,  
29 as it read on January 1, 2017, shall not dispense prepared food to  
30 a customer in an expanded polystyrene food service container.

31 (2) On and after January 1, 2022, a food vendor shall not  
32 dispense prepared food to a customer in an expanded polystyrene  
33 food service container.

34 (b) The Department of Resources Recycling and Recovery shall  
35 develop an Internet Web page with information on how to comply  
36 with subdivision (a) and how to file a complaint for a violation of  
37 subdivision (a).

38 (c) (1) A food vendor may request from the city or county in  
39 which the food vendor is located an exemption from subdivision  
40 (a). The city or county may grant the exemption if the food vendor

1 *demonstrates to the satisfaction of the city or county that*  
2 *compliance with subdivision (a) would impose an undue economic*  
3 *hardship on the food vendor. A city or county may exempt a food*  
4 *vendor pursuant to this subdivision from subdivision (a) until*  
5 *January 1, 2023, or not more than one year from the date of the*  
6 *demonstration, whichever date is later.*

7 (2) *A food vendor granted an exemption pursuant to paragraph*  
8 *(1) may reapply to the city or county before the expiration of the*  
9 *exemption. The city or county may grant additional exemptions*  
10 *from subdivision (a) not to exceed one year each if the food vendor*  
11 *demonstrates at the time of application to the satisfaction of the*  
12 *city or county a continued undue economic hardship.*

13 42398.3. (a) A city, a county, a city and county, or the state  
14 may impose civil liability on a person or entity that knowingly  
15 violates subdivision (a) of Section 42398.2, or reasonably should  
16 have known that it was violating subdivision (a) of Section  
17 42398.2, in the amount of one thousand dollars (\$1,000) per day  
18 for the first violation, two thousand dollars (\$2,000) per day for  
19 the second violation, and five thousand dollars (\$5,000) per day  
20 for the third and subsequent violations.

21 (b) Any civil penalties collected pursuant to subdivision (a)  
22 shall be paid to the office of the city attorney, city prosecutor,  
23 district attorney, or Attorney General that brought the action. The  
24 penalties collected pursuant to this section by the Attorney General  
25 may be expended by the Attorney General, upon appropriation by  
26 the Legislature, to enforce subdivision (a) of Section 42398.2.

27 42398.4. This chapter does not preempt the authority of a  
28 county, city, or city and county to adopt and enforce additional  
29 single-use take-out food packaging ordinances, regulations, or  
30 policies that are more restrictive than the applicable standards  
31 required by this chapter.