

4. Direct LASAN to report back by April of 2025, regarding compliance with the Ordinance, the efficacy of fines and determine if fines should be increased, and if the annual cap on fines should be removed.

BACKGROUND

EPS is formed when a blowing agent, such as pentane or isopentane, is added to polystyrene, which is a thermoplastic resin made of styrene, a constituent of petroleum. EPS is lightweight, a good thermal insulator, moisture-resistant, and has high shock absorbency. These characteristics have led to its extensive use in the food and packaging industries. However, EPS is neither recyclable nor compostable in the City, does not biodegrade, poses a risk to wildlife, can easily blow out of open garbage cans and trucks because it is so lightweight, and can leach harmful chemicals into the environment when landfilled.

The City's objectives for the ordinance include the following:

- Reduce the amount of EPS, which cannot be composted or recycled, in the City's solid waste;
- Reduce the amount of EPS material that reaches local waterways and the Pacific Ocean.
- Encourage the use of reusable packaging and containers.

DISCUSSION

As analyzed in the attached Draft Environmental Analysis, the ordinance would have substantial environmental benefits. The ordinance would not result in a significant adverse impact, either direct, indirect, or cumulative. These findings are based on the assumption that there will be a shift away from EPS products, because of the ordinance, to other, substitute products. There are numerous materials readily available for use as EPS substitutes including compostable fiber/paperboard, compostable plant fibers, various recyclable plastics, which are recyclable when empty, clean and dry, glass, and durable materials such as stainless steel, ceramic, bamboo, wood, and stoneware.

Recommended Implementation Schedule

LASAN recommends that the new draft ordinance be implemented in two phases.

- Phase 1 - Applicable to food and beverage facilities with more than 26 employees beginning on April 22, 2023.
- Phase 2 - Applicable to all food and beverage facilities beginning on April 22, 2024.

The purposes of a phased approach are: 1) to allow businesses to use their existing stock of the banned EPS items, 2) to allow LASAN time to conduct adequate public outreach on the new ordinance and to research and facilitate potential eco-friendly alternative options for businesses, with emphasis to small businesses, and 3) to allow businesses to find and purchase eco-friendly alternative options.

Recommended Enforcement

LASAN recommends that the new draft ordinance be enforced in the following manner:

- LASAN to begin complaint-driven enforcement of this ordinance effective April 22, 2023.
- Written notices will be issued for first and second violations. An administrative fine of \$25 will be assessed for a third violation and each subsequent violation. The Administrative fine of \$25 shall be imposed for each day the Food or Beverage Facility or Retail Establishment is in violation, but shall not exceed \$300 per calendar year.

Statewide Legislation

In the State of California, there are 97 cities or counties that have EPS bans, ranging from bans that apply only to government facilities, to bans on use in restaurants and by foodware vendors, to full bans on the distribution or use of any EPS products. In addition Senate Bill 54 was signed into law in June 2022 and specifies the following: *“(i) Producers of expanded polystyrene food service ware shall not sell, offer for sale, distribute, or import in or into the state expanded polystyrene food service ware unless the producer demonstrates to the department that all expanded polystyrene meets the following recycling rates:*

- A. Not less than 25 percent on and after January 1, 2025.*
- B. Not less than 30 percent on and after January 1, 2028.*
- C. Not less than 50 percent on and after January 1, 2030.*
- D. Not less than 65 percent on and after January 1, 2032, and annually thereafter.”*

Los Angeles County Supervisors passed an EPS ban¹ on April 13, 2022. Most provisions of the Los Angeles County ordinance will become effective on the following schedule:

1. May 1, 2023, for food facilities operating in a permanent location and for all retail establishments;
2. November 1, 2023, for food trucks; and
3. May 1, 2024, for certified farmers' markets, temporary food facilities, and catering operations.

Education and Outreach

LASAN has launched an education and outreach campaign, consisting to date of five virtual meetings with food service providers and retailers. LASAN has also sent a survey to potentially affected businesses to obtain feedback on the ordinance.

Upon Council approval of the draft ordinance, LASAN will conduct further education and outreach, including one or more press events; contact with all major affected businesses and industries; development and mailing of an informational document to all food/beverage facilities operating in the City of Los Angeles. LASAN’s informational document will be designed to also serve as a customer advisory that can be posted inside restaurants and/or at drive-through kiosks.

¹ Title 12 – Environmental Protection, Chapter 12.86 of the Los Angeles County Code, Reduction of Waste from Single-Use Articles and Expanded Polystyrene Products." The County filed a Notice of exemption for the amended ordinance, using Class 7 and Class 8 categorical exemptions, on April 13, 2022.