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| 4/27/2021 | 1 | Zero Waste Subcommittee | Approved as shown above (See Motion) | Pass |

Policies Regulating Polystyrene on City Property (NB)

Public Works Community Builders gave a presentation on prohibiting polystyrene on city property. At a meeting in December 2020, the Zero Waste Subcommittee directed staff to move forward with revising the Purchasing Policy and Real Estate Policy to prohibit polystyrene. A draft ordinance banning single use plastic and polystyrene products has been presented as a separate agenda item.

State law preempts municipalities from banning polystyrene citywide, but does allow cities to regulate polystyrene on city property. There is a broader statutory preemption for single use plastic bags. The City Attorney’s office recommends that the only rule regarding plastic bags be for direct purchases by the City, such as bags handed out at promotional events. The City cannot regulate or impose a rule for plastic bag use by third parties. In sum, the Purchasing Policy can be revised to state that for direct purchases of containers and bags, such as food containers at the golf course, polystyrene and single use plastic bags shall not be purchased.

Additionally, the Purchasing Policy can be revised to state that a contract shall not be awarded to a food and beverage provider who uses polystyrene and add a term to the contract prohibiting polystyrene use in the performance of the contract. Staff recommends that only contractors whose primary function is to provide food and beverages be banned from bringing polystyrene onto city property because the food and beverage provider is the largest generator of the polystyrene. Staff does not recommend punishing the consumer (i.e. employees of all contractors). If the policy were to ban all contractors and their employees, the city should also prohibit city employees from bringing polystyrene onto city property because these categories of people are similar and the justification for regulating them would be the same.

A violation of a contract term would be considered a breach of contract. The responsibility to enforce the contract would be that of the staff overseeing the contract. The Zero Waste Subcommittee should consider whether it is willing to declare a breach of contract for violation (damages or termination) of the polystyrene ban when doing so might thwart other city goals, such as awarding and maintaining contracts with small and minority businesses or getting a project completed. If the party to the contract is a sole source, staff might not want to terminate a contract for a violation of the polystyrene ban. The Committee should also consider whether there ought to be exceptions for food and beverage contractors during emergencies, such as providing food to road crews after a severe weather event.

Staff recommends that a requirement be added to the Real Estate Policy that lessees who provide food and beverages are prohibited from using polystyrene containers. This requirement can be added as a lease term and enforceable either by damages or by termination of the lease.

Goal 2: Sustainable Community and is a normal priority item.

There is no fiscal impact with this item.

The Zero Waste Subcommittee: 1) discuss proposed policy changes; 2) hear comments from staff; and 3) provide direction as appropriate.