

# Work Session

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| <b>Agenda Item #</b> | 3   |
| <b>Meeting Date</b>  | September 8, 2014                         |
| <b>Prepared By</b>   | Kenneth Sigman<br>Assistant City Attorney |
| <b>Approved By</b>   | Brian T. Kenner<br>City Manager           |

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|------------------------|--|
| <b>Discussion Item</b> | Young Activist Act of 2014   |
| <b>Background</b>      | <p>Councilmember Grimes prepared a proposed ordinance for the Council's consideration on June 16. Since that meeting, the City Attorney has confirmed the City's authority to enact such legislation; Councilmember Grimes, with the assistance of knowledgeable residents and activists, has identified practical limitations upon portions of the proposal, and City staff, the City Attorney, and Councilmember Grimes have developed a revised proposal that eliminates impractical provisions of the original proposal and clarifies some of the remaining provisions.</p> <p>The attached proposal would ban most uses of polystyrene by food service facilities in the City and encourage the use of reusable, recyclable, and compostable food service ware.</p> <p>The attached proposal does not include the previously proposed requirement that property owners provide compost collection service at multi-family residential and businesses properties. This change is a result of the findings of research done following the June discussion. In particular, there is little prospect of near-term resolution of concerns regarding facilities that would receive and process food wastes and organics collected in Takoma Park. As new regional facilities come on line, the City may wish to resume discussion of that requirement. In the interim, proponents have agreed to approach the owners of certain Takoma Park multi-unit apartment buildings whose waste haulers currently offer food-waste/organics collection in Takoma Park about piloting collection in their properties.</p> <p>The attached proposal also does not include the business recycling mandate found in the June draft. Business recycling is proposed to be addressed in a separate ordinance that will also modernize the residential recycling provisions of the City Code.</p> <p>Further, Montgomery County Councilmember Hans Riemer has communicated his intention to introduce County legislation that would, as of the current draft, "require the use of compostable or recyclable food service ware by the County, County contractors or lessees, and food service businesses." This requirement, extended to Takoma Park food-service businesses, could be conveniently aligned with imposition of City commercial composting requirements. The effective date in the current draft of the proposed County legislation is January 1, 2016.</p> |
| <b>Policy</b>          | The City seeks to further environmental sustainability and protect the public health.  |
| <b>Fiscal Impact</b>   | Unknown at this time.  |
| <b>Attachments</b>     | Legal memorandum and proposed legislation  |
| <b>Recommendation</b>  | Discuss the proposed ordinance.  |

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| <b>Special<br/>Consideration</b> |  |
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TO: City of Takoma Park Mayor and City Council

VIA: Jessie Carpenter

CC: Brian Kenner, Daryl Braithwaite, Sara Daines

FROM: Kenneth Sigman, Asst. City Attorney

RE: Preliminary legal analysis of the Young Activists Act

DATE: September 4, 2014

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The purpose of this Memorandum is to provide the Council with a preliminary analysis of the proposed Young Activists Act of 2014 (“Act”) a preliminary draft of which Councilmember Grimes presented to the Council at the June 16 City Council Worksession, to provide background information about the City’s existing policies and practices regarding polystyrene food-service ware, composting and recycling, and summarize and explain differences between the June 16 proposal and the attached revised proposal.

### **Legal Authority**

The Act would prohibit the use of most polystyrene utensils, packaging, and tableware by commercial foodservice entities in the City and by groups using City facilities.

The original proposal would have required landlords and condominium associations to make compost collection service available to residents of multifamily buildings and required businesses to compost. The revised proposal does not include the business and multifamily composting mandate because there are logistical issues that must be addressed before such a mandate will be practical.

The original proposal also included a requirement that businesses recycle paper, glass, metal, and plastic. This requirement has been removed from the proposal, and the business-recycling requirement will be implemented in a separate ordinance that will also modernize the residential recycling provisions of the City Code.

This Office believes that the City has clear authority to enact the polystyrene ban and to require multifamily-residential and business compost collection and business recycling pursuant

to its “police power” authority to promote the health, safety, and welfare of its residents and its express power to provide for the proper disposal of refuse.

## **Background**

Currently, the City prohibits mobile vendors operating in Takoma Park from using polystyrene products. The proposal would extend the same prohibition to other foodservice providers.

The City requires residents of single-family homes to recycle and it provides food waste compost collection service to single family residences, although participation is voluntary.

The City requires multifamily property owners and condominium associations to make recyclable collection available to residents, although the residents’ participation is voluntary. The City makes its trash and recyclable collection services available to multifamily buildings with 12 or fewer units for an annual fee of \$143.00 for the first two units and \$143.00 for each additional unit. Some multifamily properties with 12 or fewer units elect to use a private collection service. The City will soon begin collecting compostable materials from the multifamily buildings where it already collects trash and recyclables. Larger multifamily properties must contract with a commercial trash and recyclable collection service.

The City does not provide refuse, recyclable, or compost collection services to businesses and currently does not require businesses to recycle.

## **Revisions to the Proposed Young Activist Act**

The Council raised several policy questions and practical concerns about the proposed Ordinance at its June 16 Worksession. City staff analyzed the proposal and raised additional policy questions and practical concerns relating to the proposed ordinance. Councilmember Grimes’s revised proposal answers many of the questions and concerns. The changes to the proposal are outlined below:

### **Mandatory Composting**

- The multifamily and business compost collection mandate has been removed from the proposal because of concerns about the lack of local capacity to process compost and, with respect to multifamily composting, because of questions about the practical implementation of a composting plan.<sup>1</sup>

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<sup>1</sup> Staff hopes to learn from its upcoming implementation of compost collection for small multifamily properties and will encourage and provide support to a few large multifamily properties to implement pilot compost collection programs.

## **Polystyrene Ban**

- To facilitate compliance and enforcement, and further reduce the use of polystyrene, the revised proposal limits the exception to the polystyrene ban for food packaged outside the city to only shelf-stable polystyrene-packaged foods. For example, under the revised proposal, a convenience store could sell factory-packaged ramen noodle cups but not sandwiches made in a commercial kitchen in Silver Spring that are placed on a polystyrene tray and wrapped in plastic-wrap.
- The revised proposal makes clear that the sale of polystyrene-packaged raw meat and eggs is permissible.
- The revised proposal moves the effective date of the ban from January 1, 2015, to July 1, 2015, to allow the City to develop public information materials and to allow food-service facilities to adjust their practices.

## **Conclusion**

The City has clear legal authority to legislate regarding the health and environmental issues addressed in the proposed Young Activists Act, so this Office does not have any legally required modifications to the proposal. This Office and Staff may have additional suggestions regarding the underlying policies of the proposal upon further review, and looks forward to receiving input from the Council, residents, and affected food-service businesses during the public consideration of the Young Activist Act.

**City of Takoma Park, Maryland**

1 **Ordinance 2014-XX**

2 **“The Young Activists Act of 2014”**

3 **Amending the *Takoma Park Code* Title 8. Business, to add restrictions on the commercial use**  
4 **of polystyrene food-service ware in Takoma Park.**

5 WHEREAS, Title 8 Business governs commercial operations within the City, including Sale of  
6 Food and Drink, and Title 14 Health and Safety protects the public health, safety, comfort, and  
7 general welfare of the residents and businesses of the City;

8 WHEREAS, Takoma Park’s Strategic Plan for FY2010-15, adopted May 18, 2009, articulates  
9 concern for clean water and safe neighborhoods and working environments and calls for “use of  
10 alternative, less environmentally damaging products”;

11 WHEREAS, polystyrene (resin code #6, commonly known as Styrofoam), often used in the  
12 manufacturer of food-service ware, is made from styrene, a known neurotoxicant that has been  
13 found to be reasonably anticipated to be a human carcinogen;

14 WHEREAS, items composed of polystyrene are not recyclable;

15 WHEREAS, the Takoma Park Task Force on Environmental Action called on the City to institute a  
16 polystyrene ban for its own use, which the City did via Resolution 2010-32, adopted June 7,  
17 2010, which resolved that “organizers of public events, businesses, families and individuals in  
18 Takoma Park are encouraged to seek and use alternatives to polystyrene (resin code #6) food-  
19 service ware”;

20 WHEREAS, by Ordinance 2013-31, enacted June 17, 2013, the City prohibited “use of Styrofoam  
21 or similar polystyrene food-service ware and containers” (using a commonly used trade name)  
22 by “transient merchants” including food trucks and stands at farmers markets and festivals;

23 WHEREAS, the City wishes to more widely promote health and environmental protections within  
24 its borders;

25 WHEREAS, non-polystyrene food-service ware and packaging is affordable and available, as is  
26 compostable food-service ware, although reuse of durable food-service ware is a preferable  
27 alternative to disposal, recycling, and composting;

28 WHEREAS, Takoma Park residents including the members of the Young Activists Club have long  
29 sought city action, to complement their own, to protect City residents and visitors from  
30 exposure to harmful polystyrene food-service ware and packaging;

31 WHEREAS, Takoma Park businesses including Capital City Cheesecake, SouperGirl, and the TPSS  
32 Co-op have successfully and affordably implemented programs eliminating or restricting use of  
33 polystyrene food-service ware, packaging and adopting use of durable or compostable food-  
34 service ware, and/or source-separating food wastes and compostable service ware for  
35 composting; and

36 WHEREAS, the City of Takoma Park wishes to extend health and environmental protections and  
37 benefits to all city residents, visitors, and businesses.

38 **THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:**

39 **SECTION 8.** Title 8, Business, of the *Takoma Park Code* is amended as follows:

40 **8.16.080 Polystyrene food-service ware and packaging.**

41 A. Definitions.

42 1. *Food-service facility* means any enterprise within the City of Takoma Park that prepares  
43 or sells food or drink for human consumption on or off premises. Food-service facility includes,  
44 but is not limited to:

45 a. Any restaurant, coffee shop, bakery, retail market, cafeteria, take-out counter, food  
46 truck or stand, sidewalk or festival vendor or temporary stand, commercial kitchen, grocery  
47 store, convenience store, and catering operation; and

48 b. Any food-service facility in an institution, hospital, club, school, church, park or  
49 public building, meeting or convention facility, or camp.

50 2. *Polystyrene* means a thermoplastic petrochemical material utilizing the styrene  
51 monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by  
52 any number of techniques, including but not limited to fusion of polymer spheres (expandable  
53 bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam  
54 polystyrene), and clear or solid polystyrene (oriented polystyrene). The recycle code for  
55 polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies  
56 to all polystyrene food-service ware, regardless of whether it exhibits a recycle code.

57 B. Materials covered by this section include:

58 1. Food-service ware such as utensils, cutlery, tableware, cups, lids, and plates, with which  
59 food or drink comes in contact during storage, preparation, service, or consumption.

60 2. Food packaging such as bags, boxes, wrappings, trays, "clamshell" containers, bottles,  
61 and other containers, with which food or drink comes in contact during storage, preparation,  
62 service, or consumption.

63 C. Effective July 1, 2015, food-service facilities specified in Subsection A may not use  
64 polystyrene-composed packaging or food-service ware described in Subsection B of this section  
65 when providing foods for on-site or take-away consumption, including via resale.

66 D. The City of Takoma Park shall not purchase any covered materials, nor shall any City  
67 sponsored event use covered materials. No person using City of Takoma Park premises or

68 facilities pursuant to the City's community use of public facilities program shall use covered  
69 materials at City premises or facilities.

70 E. Food-service facilities are encouraged to use durable, reusable, non-polystyrene food-  
71 service ware for on-site dining and to minimize packaging and use durable, reusable packaging  
72 materials, or recyclable or compostable materials when using disposable packaging.

73 F. This Chapter does not prohibit the sale or use of the following products:

74 1. polystyrene-packaged uncooked meat, fish, poultry, or seafood for off-premises  
75 preparation and consumption;

76 2. factory-sealed, aseptically-packaged shelf-stable foods;

77 3. polystyrene-packaged raw eggs; and

78 4. polystyrene coolers and ice chests.

79 G. Food-service facilities may request a waiver, of fixed duration not more than two years,  
80 allowing specific uses of specific service ware or packaging. The uses and specific service ware or  
81 packaging must be listed in the waiver request, with a statement explaining the safety or health  
82 reasons or lack of non-polystyrene alternatives or other hardship conditions that justify a  
83 waiver.

84 H. The City Manager is authorized to extend a date of compliance if the business owner or  
85 operator, or institutional director or food-service manager, requests an extension prior to the  
86 applicable date of compliance and demonstrates that he or she, despite best efforts, cannot  
87 comply with the requirements set forth in this section.

88 I. The City Manager shall identify or prepare, and then periodically disseminate, materials that  
89 educate owners and operators of City food-service businesses about the deleterious health and  
90 environmental consequences of polystyrene use in food-service ware and packaging, and that

91 describe non-polystyrene alternatives, especially durable, reusable materials. Educational  
92 materials may take the form of pamphlets and brochures, whether produced and distributed on  
93 paper or electronically, and classes and seminars, involving City staff, non-City governmental  
94 agencies, community and advocacy groups, and other resources.

95 J. The City Manager shall publish notice of the City's polystyrene food-service ware ban,  
96 including description of non-polystyrene alternatives, to customary outlets, and shall provide  
97 notice regarding the polystyrene-related provisions of this ordinance periodically for one year  
98 after the effective date of the City's ban, to commercial and institutional food-service outlets in  
99 the City and to the operators of City festivals and events.

100 K. Failure to comply with any of the requirements in this section, as of July 1, 2015, shall  
101 constitute a Class C offense. Each day a violation occurs constitutes a separate offense.

102 **SECTION 8.** Title 8 Business, Chapter 12 Vendors, Section 090 Recycling and trash, Paragraph B,  
103 of the *Takoma Park Code* is amended as follows:

104 B. The provisions of 8.16.80 apply to vendors, regardless of permit requirements.

105 **AND BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:**

106 The City of Takoma Park recognizes and commends the Young Activist Club for their hard work  
107 and dedication that led to the creation of this ordinance.

108

109 ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS XX DAY OF XX,

110 2014, BY ROLL-CALL VOTE AS FOLLOWS:

111 AYE:

112 NAY:

113 ABSENT:

114 ABSTAIN