

#331a  
11-15-2022

(R-2023-239)

RESOLUTION NUMBER R- 314466

DATE OF FINAL PASSAGE NOV 28 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING ENVIRONMENTAL IMPACT REPORT SCH. NO. 2020120099 AND ADOPTING THE FINDINGS, AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR SINGLE USE PLASTIC REDUCTION ORDINANCE.

WHEREAS, the City of San Diego is repealing sections 66.0901, 66.0902, 66.0903, 66.0904, 66.0905, 66.0906, and 66.0907 of its 2019 Single Use Plastic Reduction Ordinance (O-21030) and then readopting those sections with minor clarifications (Project); and

WHEREAS, the matter was set for a public hearing to be conducted by the City Council of the City of San Diego; and

WHEREAS, the matter was heard by the City Council on November 15, 2022; and

WHEREAS, the City Council considered the issues discussed in the Environmental Impact Report Sch. No. 2020120099 (Report) prepared for this Project; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it is hereby certified that the Report has been completed in compliance with the California Environmental Quality Act of 1970 (CEQA) (California Public Resources Code Section 21000 et seq.), as amended, and the State Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.), that the Report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Report, together with any

comments received during the public review process, has been reviewed and considered by the City Council in connection with the approval of the Project.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081 and CEQA Guidelines Sections 15091 and 15093, the City Council hereby adopts Findings and a Statement of Overriding Considerations with respect to the Project, copies of which are attached hereto as Exhibits A and B and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the Report and other documents constituting the record of proceedings upon which the approval is based are available to the public at the Office of the City Clerk at 202 C Street, San Diego, CA 92101.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project after final passage of the ordinances associated with the Project.

APPROVED: MARA W. ELLIOTT, City Attorney

By           /s/ Noah J. Brazier            
Noah J. Brazier  
Deputy City Attorney

NJB:nja  
10/26/2022  
Or. Dept: ESD  
Doc. No. 3125179

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 15 2022

ELIZABETH S. MALAND  
City Clerk

By *Cennie Patterson*  
Deputy City Clerk

Approved: 11/21/22  
(date)

*Todd Gloria*  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

**EXHIBIT A**  
**CANDIDATE FINDINGS**  
**FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE**  
**CITY OF SAN DIEGO SINGLE-USE PLASTIC REDUCTION ORDINANCE**  
**SCH No. 2020120099**

**December 2022**

December 2022

## **I INTRODUCTION**

### **A. Findings of Fact**

The following Candidate Findings are made for the City of San Diego Single-Use Plastic Reduction Ordinance (hereinafter referred to as the "Project"). The environmental effects of the Project are addressed in the Final Program Environmental Impact Report ("Final PEIR") dated July 20, 2022 (State Clearinghouse No. 2020120099), which is incorporated by reference herein.

The California Environmental Quality Act (CEQA) (Public Resources Code [PRC] §§ 21000, *et seq.*) and the State CEQA Guidelines (CEQA Guidelines) (14 California Code of Regulations [CCR] §§ 15000, *et seq.*) promulgated thereunder, require that the environmental impacts of a project be examined before a project is approved. In addition, once significant impacts have been identified, CEQA and the CEQA Guidelines require that certain findings be made before project approval. It is the exclusive discretion of the decision maker certifying the EIR to determine the adequacy of the proposed candidate findings. Specifically, regarding findings, CEQA Guidelines Section 15091 provides:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - 1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
  - 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - 3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.
- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required

in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

These requirements also exist in Section 21081 of the CEQA statute. The "changes or alterations" referred to in CEQA Guidelines Section 15091(a)(1) above, that are required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects of the project, may include a wide variety of measures or actions as set forth in CEQA Guidelines Section 15370, including:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Should significant and unavoidable impacts remain after changes or alterations are applied to the project, a Statement of Overriding Considerations must be prepared. The statement provides the lead agency's views on whether the benefits of a project outweigh its unavoidable adverse environmental effects. Regarding a Statement of Overriding Considerations, CEQA Guidelines Section 15093 provides:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."
- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support

its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

- (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Having received, reviewed and considered the Final Program Environmental Impact Report for the Project (State Clearinghouse No. 2020120099), as well as all other information in the Record of Proceedings on this matter, the following Findings of Fact (Findings) are made by the City of San Diego (City) in its capacity as the CEQA Lead Agency. These Findings set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies (as applicable) for the implementation of the Project.

#### **B. Record of Proceedings**

For purposes of CEQA and these Findings, the Record of Proceedings for the Project consists of the following documents and other evidence, at a minimum:

- The Notice of Preparation (NOP), dated December 4, 2020, and all other public notices issued by the City in conjunction with the Project;
- The Draft PEIR;
- The Final PEIR;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft PEIR;
- All responses to written comments submitted by agencies or members of the public during the public review comment period on the Draft PEIR and included in the Final PEIR;
- The reports and technical memoranda included or referenced in the Responses to Comments and/or in the Final PEIR;
- All documents, studies, EIRs, or other materials incorporated by reference in the Draft PEIR and the Final PEIR;
- Matters of common knowledge to the City, including but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these Findings and the Statement of Overriding Considerations; and
- Any other relevant materials required to be included in the Record of Proceedings pursuant to PRC Section 21167.6(e).

## **II. PROJECT SUMMARY**

### **A. Project Location**

The City of San Diego (City) is located within the County of San Diego in the southwestern corner of California. The Project would apply throughout the City, which encompasses approximately 372 square miles, from the Cities of Del Mar and Escondido to the north; the Cities of La Mesa, Santee, and El Cajon to the east; the Cities of Chula Vista, National City, Imperial Beach, and the International Border to the south; and the Pacific Ocean to the west.

Adjoining jurisdictions include unincorporated San Diego County and the cities of Solana Beach, Del Mar, Escondido, Poway, La Mesa, El Cajon, Santee, Lemon Grove, Coronado, National City, Chula Vista, and Imperial Beach.

## **B. Project Background**

Polystyrene is one of the most widely used forms of plastic in consumer goods and Californians alone use approximately 165,000 tons each year for packaging and food service purposes; however, only 0.2 percent of polystyrene food packaging is recycled (Gardner and Lee 2008; Clean Water Action California 2009). The population of San Diego, in 2019, was estimated at 1,425,976 individuals who use an estimated 6,270,000 pounds of polystyrene service ware containers per year. The City spends millions of dollars each year on prevention, cleanup, and other activities to reduce litter. In 2017, the Surfrider Foundation's San Diego Chapter removed 20,883 pieces of polystyrene foam from City beaches (Surfrider Foundation San Diego County 2019).

For decades the City has proactively addressed waste reduction and litter control with planning including the City Council-approved "Recycling and Waste Reduction Plan" in 1988, the "Source Reduction and Recycling Element" in 1992, updated in 1994 and annually thereafter, and, in July 2015 the City Council unanimously approved a "Zero Waste Plan," which includes single use plastic reduction as one of its components.

One of the more challenging aspects of solid waste management is determining which approach to managing waste has the least impacts on the environment. PRC Section 41780 *et seq.* specifies that "source reduction," also known as waste prevention, is the most preferable approach to solid waste management because recycling, which is typically preferable to disposal in landfills, is often associated with greenhouse gas (GHG) production from transportation and remanufacture. Using the United States Environmental Protection Agency's (USEPA) Waste Reduction Model (WARM) to track GHGs associated with different management strategies shows that source reduction results in fewer impacts than any other approach. Both source reduction and recycling are considered "diversion" from landfills, and both help reduce impacts associated with products made from "virgin" (unrecycled) materials.

Polystyrene is not accepted in most curbside collection recycling programs due to the low market value and the requirement to have a clean, separated stream that undergoes an initial compaction process. After compaction, waste polystyrene can be shipped and used as a feedstock of recycled plastic pellets, which are used for insulation sheets and other materials such as clothes hangers, park benches, flowerpots, toys, rulers, stapler bodies, seedling containers, picture frames, architectural molding, and metal casting operations. Polystyrene can be combined with cement to be used as an insulating amendment in the making of concrete foundations and walls.

California has established a state goal, found in PRC section 41780 *et seq.*, of diverting 75 percent of the material being disposed of in landfills by 2020. However, based on Assembly Bill (AB) 939 reporting to the State, local governments are not evaluated on whether they recycle more, but rather on whether they dispose of less. Therefore, reducing waste is the overall goal. The Project, if approved, would regulate some single-use plastics in the city.

### **C. Project Description and Purpose**

The City is proposing an ordinance that would amend the San Diego Municipal Code (SDMC) to restrict the use of polystyrene products throughout the city. The proposed ordinance includes a ban of the distribution of egg cartons, food service ware, or food trays that are made, in whole or in part, from polystyrene foam. Items that are made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a non-polystyrene foam material (e.g., coolers, ice chests, or similar containers; pool or beach toys; or dock floats, mooring buoys, or anchor or navigation markers) will also be banned from distribution. Products that are made, in whole or in part, from polystyrene foam will be banned from distribution in or at facilities within the City. The proposed ordinance will allow the distribution of prepared food that is packaged in food service ware or that uses food trays made, in whole or in part, from polystyrene foam, if the prepared food is packaged outside of the City and is provided to the consumer as originally packaged. The proposed ordinance would limit the distribution of food service ware products such as, utensils and straws, for takeout orders of prepared food, and will only allow the provision of utensils upon the request of the person ordering the prepared food.

The ordinance will also include a process for obtaining a waiver of the provisions regarding food service ware and food trays if the applicant or City official seeking the waiver demonstrates that adherence to the ordinance would result in the following: 1) a feasibility-based hardship; 2) a financial hardship; and/or 3) a violation of a contractual requirement.

### **D. Statement of Objectives**

As described in Section 2.2 of the Final PEIR, the objectives for the Project include:

- Reducing the consumption of polystyrene, a difficult-to-manage material;
- Encouraging the use of more easily recyclable products, consistent with California's waste reduction hierarchy;
- Providing an enforceable ordinance within the SDMC; and
- Reducing litter and the associated adverse impacts to storm water facilities, aesthetics, and the environment.

### **III. ISSUES ADDRESSED IN THE FINAL PEIR**

The Final PEIR concludes that the Project will have **no significant impacts** and requires no mitigation measures with respect to the following issues:

- Agricultural and Forest Resources
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Utilities
- Mineral Resources
- Energy
- Visual Impacts, Aesthetics
- Biological Resources
- Cultural Resources

- Geology, Soils
- Land Use, Planning
- Noise
- Population, Housing
- Public Services (Other than Solid Waste, Water, and Sewer)
- Recreation
- Transportation/ Traffic
- Tribal Cultural Resources
- Wildfire

**Less than Significant Impacts**

The Final PEIR identified the following issue areas as having less than significant impacts:

- Air Quality

**Significant and Unavoidable Impacts**

No feasible mitigation measures are available to reduce impacts to below a level of significance for the following issue:

- Greenhouse Gas (GHG) Emissions

**IV. FINDINGS REGARDING SIGNIFICANT IMPACTS**

**A. Findings Regarding Impacts that will be Mitigated to Below a Level of Significance (CEQA §21081(a)(1) and CEQA Guidelines §15091(a)(1))**

The City, having independently reviewed and considered the information contained in the Final PEIR and the public record for the Project, finds, pursuant to PRC Section 21081(a)(1) and CEQA Guidelines Section 15091(a)(1), that there are no changes or alterations which have been required in, or incorporated into, the Project which would avoid or substantially lessen the significant environmental effect as identified in the Final PEIR.

**B. Findings Regarding Mitigation Measures which are the Responsibility of Another Agency (CEQA §21081(a)(2) and CEQA Guidelines §15091(a)(2))**

The City, having independently reviewed and considered the information contained in the Final PEIR and the public record for the Project, finds pursuant to CEQA Section 21081(a)(2) and CEQA Guidelines Section 15091(a)(2) that there are no changes or alterations which would mitigate or avoid the significant impacts on the environment that are within the responsibility and jurisdiction of another public agency.

**C. Findings Regarding Infeasible Mitigation Measures (CEQA §21081(a)(3) and CEQA Guidelines §15091(a)(3))**

The City, having independently reviewed and considered the information contained in the Final PEIR and the public record for the Project, finds pursuant to CEQA Section 21081(a)(3)

and CEQA Guidelines Section 15091(a)(3) that specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible any mitigation measures for the Project's GHG impacts.

"Feasible" is defined in Section 15364 of the CEQA Guidelines to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Section 21081 and CEQA Guidelines Section 15019(a)(3) also provide that there are changes or alterations which would mitigate or avoid the significant impacts on the environment that are within the responsibility and jurisdiction of another public agency and that "other" considerations may form the basis for a finding of infeasibility.

#### Greenhouse Gas Emissions

#### Greenhouse Gas Emissions (Issue 1)

##### Significant and Unavoidable Impact

Based on a conservative analysis, the Final PEIR concluded that the Project would have significant and unmitigable GHG impact.

##### Facts in Support of Finding and Conclusion

While certain mitigation measures are identified in the Final PEIR that could reduce the GHG impacts resulting from implementation of the Project, no feasible mitigation measures are available that would reduce the identified impacts to below a level of significance with certainty. The City has jurisdiction over the solid waste collection vehicles owned by the City and the vehicles it requires under the City's Franchise Agreements for Solid Waste Management Services. The City's Climate Action Plan (CAP) Strategy 2 (Clean and Renewable Energy) calls for the 100 percent conversion of existing diesel fuel municipal solid waste collection trucks to compressed natural gas or other alternative low emission fuels by 2035. The City's Environmental Services Department - Collections Division converted 86 out of 131 vehicles from diesel fuel to compressed natural gas in fiscal year 2020, averaging about 20 vehicles per year. The City's franchisees are also required to start converting trucks to alternative fuels vehicles (City of San Diego 2020). As such, the City has already implemented a program toward reducing emissions associated with disposal-related truck trips from the City fleet and franchises. Currently it is not feasible for the City to pursue additional reductions beyond the CAP program. However, with implementation of ongoing and future statewide regulations and programs, and the City's CAP goals, mobile source emissions associated with the proposed ordinance will decrease over time.

Consistent with CEQA Guidelines Section 15126.4(c)(3), this analysis also considered off-site measures, including offsets that are not otherwise required, to mitigate the project's emissions. As detailed in Section 3.2.4 of the Final PEIR, the annual net increase of 105 MT CO<sub>2e</sub> associated with the Project is based on a maximum impact scenario that assumes all products are plastic due to the heavier weight of plastic than paper, when in actuality, the shift from polystyrene would likely result in both plastic and paper replacement products. In addition, the estimates of the future truck trips associated with implementation of the Project and existing polystyrene use assume that all containers are delivered or disposed in separate dedicated truck loads. However, containers may be delivered to retailers and to landfills as part

of larger mixed loads scheduled for delivery regardless of the replacement product type and there may not be an actual net increase in truck traffic from the change in replacement product materials. As described in Section 2, Project Description, the actual shifts or split in composition between plastic and paper food containers in a jurisdiction may vary from year to year and change over time. Shifts may be influenced by changes in price, product availability, and as new products enter the market. Because the actual split in composition between plastic and paper food containers is not known and can vary over time, on an annual basis, the actual annual GHG emissions associated with implementation of the Project will also vary. Therefore, the necessary off-site measures, such as offsets, required to achieve net zero emissions on a yearly basis would not be feasible to accurately estimate in future years. The City would not be able to feasibly require any sort of permit or records for the purchase and delivery of replacement products to understand the actual product type breakdown and inform the ongoing net emissions change analysis on an annual basis. Similarly, the City would also not be able to feasibly require retailers to log their truck trips specifically for the purpose of delivering containers. On the contrary, it is more environmentally and economically beneficial to combine deliveries of products and materials; thus, the logistics of replacement product deliveries would not be feasible to accurately report and monitor. Therefore, offsite measures, including the purchase of offsets, would not be realistic or capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (CEQA Guidelines Section 15364).

Potential mitigation measures needed to achieve net zero GHG emissions require a multi-pronged approach that includes policy decisions at the federal and state level to require zero-emission delivery and solid waste collection vehicles. The Air Resource Board has a variety of programs aimed at zero-emission technology in the transportation sector, including but not limited to, the Advanced Clean Truck Regulation. While implementation of improved technologies for zero-emission vehicles could theoretically reduce GHG emissions associated with the Project, this approach is infeasible as much of the implementation is beyond the jurisdiction of the City. For example, the delivery trucks that would deliver the replacement products would not be City-owned vehicles, and the City does not control the vendors selected for these activities. Since requiring novel technological improvements for the delivery truck fleets would not be entirely within the City's jurisdiction, this potential mitigation measure is regarded as infeasible. Therefore, impacts associated with GHG emissions would remain significant and unavoidable and no additional feasible mitigation measures are available.

### **C. Findings Regarding Alternatives**

Because the Project will cause an unavoidable significant environmental effect, the City must make findings with respect to the alternatives to the Project considered in the Final PEIR, evaluating whether these alternatives could feasibly avoid or substantially lessen the Project's unavoidable significant environmental effect while achieving most of its objectives. The City, having reviewed and considered the information contained in the Final PEIR and the Record of Proceedings, and pursuant to CEQA §21081(a)(3) and CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives identified in the Final PEIR.

Specific economic, legal, social, technological, or other considerations, including considerations of the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the FEIR as described below.

“Feasible” is defined in Section 15364 of the CEQA Guidelines to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” CEQA Statute Section 21081 and CEQA Guidelines Section 15019(a)(3) also provide that “other” considerations may form the basis for a finding of infeasibility. Case law makes clear that an alternative can be deemed infeasible on the basis of its failure to meet project objectives or on related public policy grounds.

Three alternatives received a detailed analysis in the Final PEIR:

- Alternative 1: No Project Alternative
- Alternative 2: Enforceable Materials Specifications
- Alternative 3: Enforceable Materials Specifications and Fee Requirements

These three project alternatives are summarized below, along with the findings relevant to each alternative.

#### **Alternative 1: No Project Alternative**

The No Project Alternative, required to be evaluated in the Final PEIR, considers the “existing conditions...as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services” [CEQA Guidelines Section 15126.6(e)(2)].

Under the No Project Alternative, no Single Use Plastic Reduction Ordinance would be enacted. The proposed ordinance would be removed from the SDMC and the existing use of polystyrene in the City would remain unchanged.

#### **Potentially Significant Impacts**

The Draft PEIR did not identify any potentially significant impacts to air quality or GHG emissions. This alternative would not increase air quality or GHG emissions.

#### **Finding**

The City rejects the No Project Alternative as it fails to satisfy the Project’s purpose and because it fails to meet any of the Project’s objectives. The City also finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible.

#### **Facts in Support of Finding and Conclusion**

The City finds that the No Project Alternative would fail to achieve any of the Project’s stated objectives. The No Project alternative would not have potential negative effects because it is the definition of baseline conditions. While this alternative would not increase air quality or GHG emissions, it would not be consistent with ARB’s 2017 Climate Change Scoping Plan’s goal to maximize recycling diversion from landfills. In addition, the No Project alternative would also fail to provide the potential desired outcomes associated with the proposed project such as reduced litter and waste reduction, fewer harmful effects on the surface water and the coastal environment. Under the No Project Alternative, impacts associated with polystyrene, such as litter, would remain at current levels, increasing proportionately with increases in the City’s population. This alternative, unlike Alternative 2 and 3, would not reduce consumption of polystyrene products within the city, would not promote the use of alternative polystyrene

products, and would not reduce the adverse environmental effects associated with polystyrene, including litter impacts.

### **Alternative 2: Enforceable Materials Specifications**

Alternative 2 would add to the proposed ordinance the City's ability to enforce the use of acceptable alternative material types that would be made available on the City's Environmental Services Department webpage. This alternative would ensure that the replacement products to polystyrene are commonly acceptable materials in local recycling streams (excluding expanded polystyrene), thereby strengthening the clarity of the prohibited material type and reducing the potential impact of replacement materials that may need to be landfilled or may contaminate the recycling stream. This alternative would increase the fulfillment of the project objectives of encouraging the use of more easily recyclable products and providing an enforceable ordinance.

### **Potentially Significant Impacts**

Alternative 2 would result in similar air quality and GHG emissions as the proposed project, as the addition of clarifying language would not alter the volume of polystyrene replacement product used at a magnitude to cause a notable change from the analysis presented in the IS Checklist and this EIR.

### **Finding**

The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

### **Facts in Support of Finding and Conclusion**

Alternative 2 would result in similar air quality and GHG emissions as the proposed project. The addition of clarifying language would not alter the volume of polystyrene replacement product used at a magnitude to cause a notable change from the analysis presented in the Final PEIR. This alternative would provide criteria that the acceptable alternative products are recyclable (not including polystyrene), as opposed to non-recyclable alternatives (which would be landfilled), which is in line with the EPA's waste reduction hierarchy. Additionally, this alternative would provide acceptable alternatives that do not include toxins (i.e., prohibiting products that include toxins such as PFAS—a group of man-made chemicals in single use service ware); thereby reducing the amount of toxins in the local landfills and environment. Alternative 2 would achieve all Project objectives, and to a greater extent than under the Project as it would increase the City's ability to enforce the proposed ordinance through the addition of clarifying language. This alternative would achieve all Project objectives and may provide improvement over existing baseline environmental conditions associated with environmental health and safety and water quality as the objective of reducing polystyrene products in the waste stream could occur more rapidly under Alternative 2 compared to the Project.

However, the City finds that Alternative 2 is infeasible on public policy grounds. A primary goal of the City is to implement a single-use plastic reduction ordinance that will be readily supported by both retailers and customers. The absence of such support would undermine ordinance compliance, present challenges for the City's enforcement, and reduce the effectiveness and environmental benefits of the regulation. Alternative 2 is not consistent with the majority of local single use plastic use reduction ordinances throughout the state, and

therefore customers and retailers are less likely to be familiar with, understand, and comply with its requirements. Further, the City finds that retailers are likely to view Alternative 2's materials specifications as too restrictive, particularly because retailers may object to a material on the list. The City finds that greater retailer flexibility is necessary as retailers adapt their behavior and practices to comply with the regulation.

Therefore, the City anticipates that this alternative would be more difficult for retailers to readily support and finds that lower retailer support would undermine this alternative's potentially greater benefits. A lack of support prior to Project adoption means that City residents would be more likely to oppose adoption of the ordinance, which creates a likelihood that the ordinance would not pass and the Project's objectives would not be achieved. Further, a lack of support for the Project during its implementation means less public buy-in for its source reduction objectives and a greater likelihood of public resistance to transitioning away from single use plastics.

### **Alternative 3: Enforceable Materials Specifications and Fee Requirements**

This alternative would ensure that the replacement products to polystyrene are commonly acceptable materials in local recycling streams (excluding expanded polystyrene), as the City would provide the same criteria of acceptable alternative products that are recyclable (as opposed to polystyrene or non-recyclable alternatives), and would also provide acceptable alternatives that do not include toxins (i.e., prohibiting products that include toxins such as PFAS); thereby reducing the amount of toxins in the local landfills and streams. In addition, Alternative 3 would expand the requirements of the proposed ordinance to include a \$0.25 fee on establishments for each use of any type of disposable cups. The intent of the fee is to discourage food vendors and consumers from choosing single use products, thus reducing waste and improving water quality (caused by litter of single use products).

#### **Potentially Significant Impacts**

The Draft PEIR did not identify any potentially significant impacts to air quality or GHG emissions.

#### **Finding**

The City finds that specific economic, legal, social, technological, or other considerations make this alternative infeasible and therefore rejects this alternative.

#### **Facts in Support of Finding and Conclusion**

Alternative 3 would achieve all Project objectives to a greater extent than under the Project itself. It is anticipated that single use plastic polystyrene use would decrease compared to the Project due to a \$0.25 fee on establishments for each use of any type of disposable cups as consumers will instead choose to use reusable drink containers. This will help reduce waste and improve water quality (from litter of single use products). The lower amounts of waste would also reduce the number of truck trips needed to transport products to establishments and the associated waste products to landfills. The lower number of truck trips would also result in a reduction in air quality and GHG emissions relative to those resulting from the Project. Thus, Alternative 3 would reduce potential environmental impacts in comparison to the Project. Alternative 3 would achieve the Project's objectives of deterring the use of single use plastic to a greater extent compared to the Project. Similarly, the Project's objective of

reducing polystyrene products in the waste stream could occur more rapidly under Alternative 3 than under the Project.

However, the City finds that Alternative 3 is infeasible on public policy grounds. A primary goal of the City is to implement a single-use plastic reduction ordinance that will be readily supported by both retailers and customers. The absence of such support would undermine ordinance compliance, present challenges for the City's enforcement, and reduce the effectiveness and environmental benefits of the regulation. Alternative 3 is not consistent with the majority of local single use plastic use reduction ordinances throughout the state, and therefore customers and retailers are less likely to be familiar with, understand, and comply with its requirements. Further, the City finds that retailers are likely to view the proposed fee as too burdensome, particularly because customers may object to a fee on a cup. Adding a fee would likely require a notification process and could result in less public acceptance of the program due to the clear and obvious cost to the consumer. The City finds that greater consumer flexibility is necessary as customers and retailers adapt their behavior and practices to comply with the regulation. If establishments find the ordinance to be overly burdensome, compliance and enforcement could become challenging.

Therefore, the City anticipates that this alternative would be more difficult for customers and retailers to readily support and finds that lower customer and retailer support would undermine this alternative's potentially greater benefits. A lack of support prior to Project adoption means that City residents would be more likely to oppose adoption of the ordinance, which creates a likelihood that the ordinance would not pass and none of the Project's objectives would be achieved. Further, a lack of support for the Project during its implementation means less public buy-in for its source reduction objectives and a greater likelihood of public resistance to transitioning away from single use plastics.

**EXHIBIT B**  
**STATEMENT OF OVERRIDING CONSIDERATIONS**  
**FINAL PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE**  
**CITY OF SAN DIEGO SINGLE-USE PLASTIC REDUCTION ORDINANCE**  
**SCH No. 2020120099**

**December 2022**

## EXHIBIT B

### STATEMENT OF OVERRIDING CONSIDERATIONS

#### (PUBLIC RESOURCES CODE §21081(b))

Pursuant to Public Resources Code §§21081(b) and 21081.5, and the California Environmental Quality Act (CEQA) Guidelines §§15093 and 15043, CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the City of San Diego Single-Use Plastic Reduction Ordinance (herein after referred to as the "Project"). This statement of overriding considerations is specifically applicable to the significant and unavoidable impacts identified in Section 3 of the Final Program Environmental Impact Report (Final PEIR). As set forth in the Findings, the Project will result in unavoidable adverse impacts related to greenhouse gas (GHG) emissions.

The City Council of the City of San Diego, having:

- I. Independently reviewed the information in the Final PEIR and the Record of Proceedings;
- II. Made a reasonable and good faith effort to eliminate or substantially lessen the significant impacts resulting from the Project to the extent feasible by adopting recommended mitigation measures identified in the Final PEIR; and
- III. Balanced the benefits of the Project against the significant environmental impacts, chooses to approve the Project despite its significant environmental impacts because, in its view, specific economic, legal, social, and other benefits of the Project render the significant environmental impacts acceptable.

The following statements identify why, in the City Council's judgement, the benefits of the Project outweigh the unavoidable significant impacts. Each of these benefits serves as an independent basis for overriding all significant and unavoidable impacts. Any one of the reasons set forth below is sufficient to justify approval of the Project. Substantial evidence supports the various benefits, and such evidence can be found in the preceding sections, which are incorporated by reference into this section, the Final PEIR, or in documents that comprise the Record of Proceedings in this matter.

1. The Project would implement the City's Zero Waste Plan and Climate Action Plan. The Project would reduce the millions of single use plastics currently used in the city, by removing products that are made, in whole or in part, from polystyrene foam material from distribution in or at facilities within the city. This would promote "source reduction" within the city, which is the most preferable approach to solid waste management and would be consistent with the goals of the City's Zero Waste Plan and Climate Action Plan. The Project would be a step towards, and consistent with, the goal of moving the public from a "consume and dispose" mentality toward a reluctance to waste resources.

The Project would promote a shift toward the use of alternative polystyrene products by prohibiting the provision of single use plastics by retailers. The education and outreach component performed by the City would further encourage reduction of polystyrene products.

The reduction of retailer single use plastics and polystyrene material in favor of sustainable, compostable alternative materials would be consistent with the goal of moving the public from a "consume and dispose" mentality toward a reluctance to waste resources.

2. The Project would protect environmental resources.

- By significantly reducing the number of single use plastics used in the city, the Project would reduce the adverse environmental impacts associated with polystyrene products, including impacts to air quality, biological resources (including marine environments), water quality, and solid waste.
- By significantly reducing the number of single use plastics used in the City, the Project would reduce litter and the associated adverse impacts to storm water facilities, aesthetics, and the environment.
- The Project is likely to be readily accepted/supported by retailers and customers. Customer and retailer support would promote ordinance compliance, reduce challenges for the City's enforcement of the ordinance, and promote the effectiveness and environmental benefits of the regulation. As the Project is similar to the majority of local single plastic use reduction ordinances throughout the state, customers and retailers would be more likely to be familiar with, to understand, and to comply with its requirements.

3. The project would implement the City of San Diego's SD Strategic Plan and General Plan Conservation Element. The project is an innovated waste management program to reduce the amount of polystyrene products entering the landfill. Reducing polystyrene litter entering the environment and the storm drains promotes effective stormwater management that decreases water pollution and promotes our ecosystem, as outlined in the Champion Sustainability SD Strategic Plan. Reducing polystyrene products will reduce litter from entering the water system thereby reducing water quality impacts. The project would implement the General Plan Conservation Element Policies CE-A2 by reducing waste by improving management and recycling programs.

**Conclusion**

For the foregoing reasons, the City Council finds that the Project's adverse, unavoidable environmental impact is outweighed by the above-referenced benefits, any one of which individually would be sufficient to outweigh the adverse environmental effects of the Project. Therefore, the City Council adopts the Statement of Overriding Considerations.

Passed by the Council of The City of San Diego on NOV 15 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 28 2022.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 314466