

ORDINANCE NO. 14-

AN ORDINANCE OF THE CITY OF CUPERTINO AMENDING TITLE 9 OF THE CUPERTINO MUNICIPAL CODE TO ADD CHAPTER 9.15 TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS

WHEREAS, plastic debris and in particular expanded polystyrene foam (“EPS”) is a distinctive litter concern because it is lightweight, floats, breaks down into small pieces, and readily travels from land to inland waterways and out to the ocean where it can be mistaken for food by birds and other marine wildlife; and

WHEREAS, EPS disposable food service ware comprises an 8% by volume of total litter observed in storm drains in Santa Clara County; and

WHEREAS, the proposed prohibition of EPS disposable food service ware would require food vendors to use alternative food service ware that will result in a reduction of EPS litter, reduce the risk of harm to aquatic wildlife, and improve water quality in the Cupertino creeks and the Southern San Francisco Bay; and

WHEREAS, on January 21, 2014, prior to taking action on the Ordinance, the City Council reviewed, considered and adopted by separate Council resolution, the proposed Negative Declaration analyzing the regional environmental impacts of the Ordinance to prohibit EPS disposable food service ware; and

WHEREAS, the City of Cupertino intends and does hereby find that this Ordinance falls within the scope of the City of San José’s Program Initial Study/Negative Declaration for EPS;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CUPERTINO:

Section 1. Chapter 9.15 is hereby added to the Cupertino Municipal Code to be numbered, entitled, and to read as follows:

CUPERTINO MUNICIPAL CODE

CHAPTER 9.15

PROHIBITION OF EXPANDED POLYSTYRENE (EPS) FOAM FOOD SERVICE WARE

9.15.100 Definitions.

Draft Ordinance No. 14-

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

A. “Disposable food service ware” means single-use disposable products used in the restaurant and food service industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls, and hinged or lidded containers (clamshells). Disposable food service ware does not include straws, utensils, drink lids, or ice chests.

B. “Food vendor” means any establishment located in the City of Cupertino that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. “Food vendor” does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.

C. “Polystyrene foam” means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene) including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). “Polystyrene foam” is commonly made into disposable food service ware products. “Polystyrene foam” does not include clear or solid polystyrene (oriented polystyrene).

D. “Prepared food” means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. “Prepared food” does not include (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

9.15.110 Polystyrene Foam Disposal Food Service Ware Prohibited.

No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after July 1, 2014.

9.15.120 Exemptions to the Polystyrene Foam Disposal Food Service Ware Prohibition.

A. A food vendor may seek an exemption from the prohibition under Section 9.15.110 due to a “unique packaging hardship” under Subsection B of this Section or a “financial hardship” under Subsection C of this Section.

Draft Ordinance No. 14-

B. The food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a “unique packaging hardship” exemption.

C. The food vendor must demonstrate both of the following to qualify for a “financial hardship” exemption: (1) a gross income under \$300,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.

D. The food vendor may submit a written application for an exemption on a form provided by the Environmental Programs Division. The Director of Public Works designee (“Director”) may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be reviewed on a case-by-case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director shall be final and is not subject to appeal.

9.15.130 Administrative Citation and Fine

(a) Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, when any person or food vendor has provided EPS foam food service ware to a customer or violated any other provision of this Chapter.

(b) Administrative citation fine amounts. Upon findings made under subsection (a), the person or food vendor shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:

- (1) First citation: One hundred dollars (\$100.00)
- (2) Second citation for the same violation within the same twelve-month period: Two hundred dollars (\$200.00)
- (3) Third or any subsequent citation for the same violation within the same twelve-month period: Five hundred dollars (\$500.00)
- (4) Each day that any person or food vendor violates the provisions of this Chapter a new and separate violation occurs.

(c) Administrative citation appeals and disposition shall be processed in accordance with Chapter 1.10 of this Code.

9.15.140 Severability

If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

Section 2. This Ordinance shall be effective on July 1, 2014.

Section 3. The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

* * * * *

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 21st day of January 2014 and ENACTED at a regular meeting of the City Council of the City of Cupertino the _____ day of _____ 2014, by the following vote:

PASSED:

Vote: Members of the City Council

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Gilbert Wong, Mayor