

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING CITY CODE TO CHANGE THE NAME OF CHAPTER 9.15, ADOPT  
NEW SECTIONS 9.15.090 AND 9.15.125, AND AMEND SECTIONS 9.15.100, 9.15.110,  
9.15.120, AND 9.15.130 TO REGULATE THE USE OF SINGLE-USE FOOD SERVICE  
WARE BY FOOD PROVIDERS AND REGULATE THE SALE OF SINGLE-USE  
FOOD SERVICE WARE AND EXPANDED POLYSTYRENE FOAM PACKING  
MATERIALS**

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1. The City Council of the City of Cupertino finds that:

WHEREAS, on February 5, 2014, the City of Cupertino adopted an ordinance to prohibit food vendors from providing prepared food using food packaging containing polystyrene foam, currently codified as Chapter 9.15 of the City Code; and

WHEREAS, this ordinance continues to prohibit the sale and use of polystyrene foam food service ware and also further regulates nonreusable food service ware and food service ware accessories in Cupertino; and

WHEREAS, the State adopted AB 619 in July 2019, which allows consumers to supply their own reusable containers for filling or refilling and requires that food establishments have an established procedure for safely accepting reusable containers; and

WHEREAS, the State recently adopted Assembly Bill 1200, which prohibits the sale or distribution of food packaging made primarily from paper, paperboard, or other natural fiber that contains per- and polyfluoroalkyl substances (PFAS) in California beginning January 1, 2023; and

WHEREAS, Assembly Bill 1200 does not include a verification mechanism to assist food providers in identifying whether the food packaging contains PFAS; and

WHEREAS, this ordinance requires that food service ware used by a food provider in Cupertino be certified as PFAS-free by an independent third-party certifying organization to assist Cupertino food providers in identifying PFAS-free food service ware; and

WHEREAS, the State also recently adopted Assembly Bill 1276, which prohibits the distribution of single-use food service ware accessories and standard condiments packaged for single use by food providers except upon request by the consumer; and

WHEREAS, a prohibition of plastics for specified nonreusable food service ware accessories furthers the City's goals and is more restrictive than the recently enacted State law; and

WHEREAS, this ordinance is consistent with the City of Cupertino's Zero Waste Policy and Climate Action Plan that seek to reduce solid waste at its source and reduce nonreusable food service ware and packaging; and

WHEREAS, the City Council of the City of Cupertino held a duly noticed public hearing on [date], and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3: California Environmental Quality Act.**

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use foodware by food providers would have no or only a de minimis effect on the environment because reducing disposable plastic foodware items such as straws, utensils, and stirrer sticks and having compostable alternatives offered only upon request and other provisions of the ordinance would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

**SECTION 4: Effective Date.**

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**SECTION 5: Publication.**

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a regular meeting of the Cupertino City Council on [date] and **ENACTED** at a regular meeting of the Cupertino City Council on [date] by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Darcy Paul, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

**Attachment A – AN ORDINANCE OF THE CITY OF CUPERTINO TO REGULATE  
THE USE AND SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED  
POLYSTYRENE FOAM PACKING MATERIALS**

**NOTE:** The existing chapter language is quite brief, so for the purposes of readability while under development, existing chapter text is highlighted in gray and the rest shows as plain text.

*The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:*

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

*Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.*

*This ordinance amends several portions of the Municipal Code. For ease of review, the amendments advancing the primary objective are presented first followed by conforming amendments. There is a separate heading in bold italics for each portion of the Code being amended. Each portion is shown beginning on a separate page.*

**SECTION 1. ADDITION OF SECTION 9.15.090 CONCERNING THE PURPOSES OF REGULATION OF THE USE AND SALE OF SINGLE-USE FOOD SERVICE WARE AND EXPANDED POLYSTYRENE PACKING MATERIALS**

**9.15.090 Purpose of Chapter**

- A. This chapter is determined and declared to be a health, sanitary, and safety measure for the promotion, protection and preservation of the health, safety and general welfare of the people and environment of the City of Cupertino.
- B. Nonreusable disposable food service ware and beverage packaging - including plates, cutlery, cups, lids, straws, “clamshells” and other containers - are major contributors to street litter, ocean pollution, marine and other wildlife harm, depletion of natural resources, and greenhouse gas emissions.

- C. Plastic litter breaks down into smaller pieces that are not biodegradable, persist in the environment on land and sea, and are present in most of the world's oceans.
- D. Among other hazards, plastic debris attracts and concentrates ambient pollutants, such as endocrine disruptors and persistent organic pollutants, in seawater and freshwater that can transfer to fish, other seafood, and salt that is eventually consumed. Nine of the top ten most common debris items found on beaches in the U.S. during International Coastal Cleanup Day are nonreusable food and beverage packaging items, and eight of them are plastic.
- E. Discharge of litter into waters of the United States is prohibited by the Federal Clean Water Act and the City's stormwater pollution prevention permit as issued by the San Francisco Bay Regional Water Quality Control Board.
- F. Even if allowed by the City of Cupertino's approved recyclables processor as recyclable, nonreusable plastic food service ware is often difficult to recycle after use because it is contaminated with food and grease.
- G. Natural fiber-based food service ware can be diverted from landfill, processed into compost, and breaks down in the environment if littered.
- H. Certain synthetic chemicals known as Per- and Polyfluoroalkyl Substances (PFAS), which are commonly used in disposable food service ware to repel water and grease, pose a public health risk as they have been linked to serious health effects.
- I. Approximately 12,000 chemicals are used in food packaging. Many of the chemical additives used in packaging are known to migrate into food and beverages. Hundreds of these chemicals are known to be hazardous to human health and the environment, and many are extremely persistent and bioaccumulative.
- J. Polystyrene foam food service ware and packaging materials are a distinctive litter concern because they are lightweight, break apart easily, are windblown into streets and waterways, and float in water until it reaches the San Francisco Bay and ocean.
- K. The City of Cupertino intends to reduce solid waste at its source and maximize recycling and composting in accordance with Cupertino's Climate Action Plan, Zero Waste Policy, and stormwater pollution prevention permit.

- L. Reducing disposable packaging by eliminating unnecessary items and transitioning to reusable products provides greater environmental benefits than managing the products that become waste, even when recycled or composted.

## **SECTION 2. AMENDMENTS TO SECTION 9.15.100 CONCERNING DEFINITIONS**

### 9.15.100 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Beverage Provider" means any business, organization, entity, group, or person that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption. Beverage Provider also includes any organization, entity, group or person that regularly provides beverages to its members or the general public as a part of its activities or services.
2. "Biodegradable Products Institute (BPI)" refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified according to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. As of January 1, 2020, all BPI-certified products are required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.
3. "City" means the City of Cupertino.
4. "City Facility" means any building, structure, or vehicle owned or operated by the City.
5. "City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.
6. "County" means the County of Santa Clara.
7. "Compostable" means that an item or material is (1) accepted in City's available composting collection program as fully compostable; (2) is listed, described, or referenced on the City's website as compostable; and (3) is certified compostable

by the Biodegradable Product Institute or other third party recognized by the Director.

8. "Contractors and Lessees" means any person or entity that has a contract with the City of Cupertino for public works or improvements to be performed, for a franchise, concession, or lease of property, for grant monies or goods and services or supplies to be purchased at the expense of the City of Cupertino.
9. "Director" means the City of Cupertino's Director of Public Works or their designee.
10. ~~"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.~~
11. "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.
12. "Fluorinated Chemical" means a class of fluorinated organic compounds containing at least one fully fluorinated carbon atom, also known as per- and polyfluoroalkyl substances, or PFAS chemicals.
13. "Food Container" means a container, bowl, plate, tray, or other vessel used to hold Prepared Food.
14. "Food Provider" means any establishment, provider, Non-Profit Vendor, or business, operating within the City that sells Prepared Food (1) to the public for consumption on or off its premises, at a catered event, and/or (2) at cafeterias, schools and places of employment, whether or not such establishments are open to the general public. Food Provider includes but is not limited to, restaurants, retail food establishments, caterers, cafeterias, stores, shops, retail sales outlets, grocery stores, delicatessens serving the public, mobile or temporary food providers, vehicles or carts, or roadside stands.
15. "Food Service Ware" means any products used for serving or consuming prepared food and includes, but is not limited to, cups, bowls, plates, trays, cartons, boxes, wrapper or liners, hinged or lidded containers (clamshells), and other items used as part of food or beverage service or in which Prepared Food is placed or packaged on a Prepared Food Provider's premises.



16. "Food Service Ware Accessory" means any type of accessory or accompanying items usually provided alongside Prepared Food in plates, containers, bowls, or cups, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment packets and saucers, straws, stirrers, splash sticks, spill plugs, cocktail sticks, and toothpicks.
17. "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.
18. "Large Event" means any indoor event at a City facility, or any outdoor event subject to a City permit, where more than 100 people attend or participate.
19. "Large Event Food Provider" means any business selling or providing based on ticket purchase or entrance fee, Prepared Food at a Large Event.
20. "Large Event Producer" means a person or entity who contracts with or obtains a permit from the City, or an agent acting on the City of Cupertino's behalf to hold its own Large Event, or City of Cupertino staff holding a Large Event.
21. "Natural Fiber" means a plant-based, non-synthetic fiber, including but not limited to paper, wood, or bamboo. Natural Fiber does not include plastic of any kind.
22. "Nonreusable" means not meeting the definition of Reusable in these definitions.
23. "Packing Material" means material used to hold, cushion, or protect items packed in a container for shipping, transport, or storage.
24. "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.
25. "Per- and Polyfluoroalkyl Substances" means, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.
26. "Polystyrene" means a thermoplastic petrochemical material utilizing a styrene monomer, including but not limited to rigid polystyrene or expanded polystyrene,

processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, expanded polystyrene molding, extrusion-blown molding (extruded polystyrene), and clear or solid polystyrene (oriented polystyrene). Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons. The resin code for Polystyrene is '6' or 'PS,' either alone or in combination with other letters. This definition applies to all polystyrene food service ware, regardless of whether it exhibits a resin code.

~~27. "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).~~

~~28. "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:~~

~~a. Any raw, uncooked meat products, fruits, or vegetables, unless it is intended for consumption without further preparation; or~~

~~b. 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.~~

27. "Prepared food" means food or beverages that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises of a food provider for consumption, including, but not limited to, ready-to-eat, dine-in, take-out or complimentary food or beverage. "Prepared food" does not include: (1) raw eggs and raw, butchered meat, fish or poultry that is sold from a butcher case or a similar retail method; (2) prepackaged food that is delivered to the food provider wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food provider in the same container or packaging; or (3) nonpolystyrene foam prepackaged items prepared on-site, which are not made to order and sold as "grocery items."

28. "Raw Food" means any uncooked meat, fish, poultry, vegetable, fruit, or egg.

29. "Recyclable" means material that can be sorted, cleansed, and reconstituted and accepted by the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. The term does not include material that will be burned, incinerated, or converted through gasification, pyrolysis, solvolysis, hydrolysis, methanolysis, enzymatic breakdown or a similar chemical conversion process used to transform materials into plastic monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, or home heating oil.
30. "Reusable Food Service Ware" means all food service ware, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.
31. "Standard Condiments and Spices" means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, hot sauce, salsa, salt, pepper, sugar, and sugar substitutes or others as determined by the City.
32. "State" means the State of California.
33. "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility's premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.
34. "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Facility to a customer for consumption off the premises. This service can be provided directly by the Food Facility or by a third-party.
35. "Third Party Food Delivery Platform" means a business engaged in the service of online food ordering and/or delivery from a Prepared Food Provider to a consumer.

**SECTION 3. AMENDMENTS TO SECTION 9.15.110 CONCERNING REGULATION OF FOOD SERVICE WARE USED BY FOOD PROVIDERS AND SOLD BY RETAILERS**

9.15.110 ~~Polystyrene Foam Disposal Food Service Ware Prohibited~~ Regulation of Food Service Ware Used by Food Providers and Sold by Retailers

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

**A. ACCESSORIES ONLY UPON CUSTOMER REQUEST**

Effective 6/1/2022

1. Food Providers shall provide Nonreusable Food Service Ware Accessories and Standard Condiments in single serve packets only upon request by customers during on-premises dining or when using a third-party food delivery platform. Nonreusable Food Service Ware Accessories and Standard Condiments packaged for single use provided by Prepared Food Providers for use by consumers shall not be bundled or packaged in a manner that requires a consumer to take a different type of Nonreusable Food Service Ware Accessory or Standard Condiment
2. Self-serve accessory stations are prohibited.
3. Food Providers and Beverage Providers, as well as City facilities, City-managed concessions, City-sponsored events, and City-permitted events, may plastic straws as an accommodation to people with disabilities who request them to enjoy equal access to food and beverage services within the City.
4. Prepared Food Providers offering Standard Condiments and Spices are encouraged to use dispensers or bulk containers rather than pre-packaged individual serving packets.
5. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only offer Disposable Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Food Service Ware Accessories are requested. Each individual Disposable Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.
6. A Prepared Food Provider may ask a drive-through consumer if the consumer wants a Nonreusable Food Service Ware Accessory if the Nonreusable Food

Service Ware Accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

7. For delivery orders, Prepared Food Providers may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

## **B. USE OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED**

Effective 6/1/2023

1. Prepared Food or Beverage Providers, including City Facility Prepared Food Providers, and City Contractors and Lessees may not sell, offer for sale, or otherwise Distribute Prepared Food prepared or packaged in Cupertino using:
  - a. Nonreusable Food Service Ware or Food Ware Accessories made, in whole or in part, from Polystyrene Foam;
  - b. Nonreusable Food Service Ware made, or Food Ware Accessories made, in whole or in part, from plastic including polyethylene, polyethylene terephthalate, polypropylene, polystyrene, even if accepted as recyclable by the City's approved recyclables processing facility;
  - c. Nonreusable Food Service Ware or Food Ware Accessories that are Compostable and not certified free of Fluorinated Chemicals by an independent third-party certifying organization approved by the Director;
  - d. Nonreusable Food Service Ware or Food Ware Accessories made in whole or in part from bio- or plant-based or other "compostable" plastic even if labeled or certified as compostable.
2. The Director may adopt a list, or reference an approved list, of suitable alternative Compostable or Recyclable Nonreusable Food Service Ware products, which means Nonreusable Food Service Ware products that the Director determines serve the same intended purpose as non-compliant products, meet the standards for what is Compostable and/or Recyclable under this Chapter, and are reasonably affordable. If a product is not included on the Director's list or referenced on an approved list, the person using the product as Nonreusable Food Service Ware will have the burden of establishing to the Director's satisfaction that the product complies with this Section.
3. It shall not be a violation of this Section to sell, provide, or purchase Prepared Food or Raw Food or Beverage packaged in Nonreusable Food Service Ware otherwise prohibited by subsection (1) if the Prepared Food or Raw Food or Beverage is

packaged outside the City and is sold or otherwise provided to the consumer in the same Nonreusable Food Service Ware in which it originally was packaged. Businesses packaging Prepared Food outside the City are encouraged to use Nonreusable Food Service Ware that is Compostable or Recyclable, is Compostable and free of Fluorinated Chemicals, and is not made, in whole or in part, from Polystyrene.

### **C. REUSABLE FOOD SERVICE WARE FOR DINING ON PREMISES**

Effective 6/1/2023

1. Prepared Food served for consumption on the Prepared Food Provider's premises shall be served only on Reusable Food Service Ware, except that disposable paper food wrappers, sleeves, and bags, foil wrappers, paper napkins, paper tray and plate liners, and straws shall be permitted, so long as they meet the requirements set forth elsewhere in this Chapter.
2. Condiments, such as sauces, ketchup, or mustard, provided for on-site consumption, shall not be served in disposable, individual-serving packets.
3. Consumption is considered on-premises if it takes place at tables and/or seating provided by the Prepared Food Provider either on its own or in conjunction with another Prepared Food Provider.
4. New building permits and new or renewed business licenses for Food Service Providers applied for, and/or deemed complete after 6/1/2023 shall only be granted to Prepared Food Providers that can demonstrate adequate capacity to comply with subsection (C.1) herein.
5. This requirement does not prohibit a Prepared Food Provider from providing, upon a customer's request, Nonreusable Food Service Ware compliant with subsection (B.1) for the customer to take away leftover Prepared Food after dining on the premises.
6. Prepared Food Providers subject to the requirements of subsection (C.1) that do not have onsite or off-site dishwashing capacity, or are unable to contract for services to wash, rinse, and sanitize Reusable Food Service Ware, in order to comply with applicable provisions of the California Health and Safety Code, may petition the Director for an exemption or extension under 9.15.120.

### **D. SALE OR DISTRIBUTION OF NON-COMPLIANT FOOD SERVICE WARE PROHIBITED**

Effective 6/1/2023

1. No Person may sell, offer for sale, or otherwise Distribute within the City any Nonreusable Food Service Ware prohibited under Section B.1.a. or B.1.d.
2. Per Section B.3, the Director may adopt, maintain, or reference a list of compliant products.

#### SECTION 4. AMENDMENTS TO SECTION 9.15.120 CONCERNING EXEMPTIONS

- A. A Food ~~vendor~~ Provider may seek an exemption from the requirements under Section 9.15.110 due to a "unique packaging hardship" under Subsection B of this section, "unused inventory" under Subsection C of this section, "significant economic hardship" under Subsection D, or request a temporary exemption to request extra time for compliance under Subsection E.
- B. The Food ~~vendor~~ Provider must demonstrate that no reasonably feasible alternative exists for ~~to~~ a specific and necessary prohibited nonreusable food service ware item to qualify for a "unique packaging hardship" exemption.
- C. The Food ~~vendor~~ Provider must demonstrate that before ~~January 1, 2014~~ [new effective date of this ordinance], it purchased the prohibited ~~polystyrene foam~~ food service ware, which cannot be returned to the distributor and, despite the food vendor's best efforts, will remain in inventory on ~~July 1, 2014~~ [date], to qualify for an "unused inventory" exemption.
- D. The Food Provider must demonstrate that the provisions of this Chapter would cause significant economic hardship. "Significant economic hardship" may be based on, but not limited to, demonstrating that suitable Nonreusable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the Director shall consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.

- E. The Food Provider must demonstrate that for other reasons not already stated it needs additional time to comply with the provisions of this Chapter.
- F. The ~~Food vendor~~ Provider may submit a written application for an exemption ~~on a form provided by~~ to the Environmental Programs Division. The Director ~~of Public Works~~ (“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 ~~six (6) months or to January 1, 2015, whichever comes first~~ one year one year. The determination of the Director shall be final and is not subject to appeal.
- G. Prepackaged Food delivered from outside the City is exempt from the provisions of this Chapter.
- H. Disposable Food Service Ware that is entirely Aluminum Foil-based including, but not limited to, aluminum trays, aluminum foil wrappers and aluminum foil baskets is exempt from the provisions of this Chapter.
- I. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

**SECTION 5. ADDITION OF NEW SECTION 9.15.125 CONCERNING RECORDKEEPING AND INSPECTION**

9.15.125 Recordkeeping and inspection.

- A. Food Providers shall keep complete an accurate record or documents of the purchase of Nonreusable Food Service Ware evidencing compliance with this Chapter.
- B. The record shall be made available for inspection at no cost to the City during regular business hours by city employees or city-designated staff authorized to enforce this Chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Provider address.



C. The provision of false or incomplete information, records or documents to the city shall be a violation of this Chapter.

## SECTION 5. AMENDMENTS TO SECTION 9.15.130 CONCERNING ADMINISTRATIVE CITATIONS AND FINES

### 9.15.130 Administrative citations and fines.

(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 for violation ed~~ of 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 is a new and separate violation ~~occurs~~.

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