ORDINANCE NO. 2013–YY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO PROHIBITING THE USE OF EXPANDED POLYSTYRENE DISPOSABLE FOOD WARE AND ENCOURAGING THE USE OF COMPOSTABLE, RECYCLABLE AND REUSABLE FOOD WARE

SECTION 1. Findings.

WHEREAS, expanded polystyrene (EPS) disposable food ware has been associated with considerable environmental impacts, including being a problematic component of litter, which is unsightly and costly to clean up; and

WHEREAS, littering EPS food ware can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, EPS food ware is commonly used by food providers in the City of El Cerrito, and has limited recycling potential; and

WHEREAS, the City of El Cerrito has a substantial interest in protecting its waterways, environment, and taxpayers from the negative impacts of EPS food ware; and

WHEREAS, restricting the use of EPS food ware products and replacing non-compostable, non-reusable, or non-recyclable food service ware with compostable, reusable, or recyclable food service ware products will further protect waterways and promote environmental sustainability; and

WHEREAS, compostable food ware products such as cups, plates, bowls and hinged containers are available in local stores, are increasingly available in the food service market; and

WHEREAS, many businesses in Bay Area cities engage in organics recycling and have demonstrated that the use of compostable food ware can reduce disposal costs when the products are taken to composting facilities as part of an organics recycling program rather than disposed in a landfill; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of El Cerrito and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Section 15061(b)(3) or Section 15308 of the CEQA Guidelines.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.24 and shall read as follows:

8.24.010 - Title.

This Ordinance shall be known as the El Cerrito Food Ware Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.24.020 - Operative Date.

This Ordinance shall become operative on January 1, 2014 and shall become enforceable on July 1, 2014.

8.24.030 - Purpose.

It is the intent of the City of El Cerrito in enacting Chapter 8.24 to eliminate the use of expanded polystyrene food ware and to encourage the use of reusable, recyclable or compostable food containers by food providers and customers in El Cerrito.

8.24.040 - Definitions.

The following definitions apply to this Ordinance:

A. "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International standards D6400 or D6868 for compostable materials, as those standards may be amended.

B. "Compostable" means the product is capable of composting and is labeled in accordance with California law, or is consistent with the timeline and specifications of ASTM D6400 and D6868, without regard to material type.

C. "City Facilities" means any building, structure or vehicle owned or operated by the City of El Cerrito, its agents, agencies, departments or franchisees.

D. "Customer" means any member of the public obtaining Prepared Food from a Food Provider.

E. "Disposable Food Ware" means all containers, bowls, plates, trays, cartons, cups, forks, spoons, and knives and other items that are designed for one-time use for Prepared Foods, including service ware for take-out foods and/or leftovers from partially consumed meals prepared by Food Providers. This term does not include lids or straws.

F. "Food Provider" means any vendor, business, organization, entity, group or individual, including any Restaurant or Retail Food Establishment, located or operating within the City of El Cerrito or providing food or beverage to the public, and any provider of Prepared Food at organized or special events occurring within the boundaries of the City of El Cerrito.

G. “Expanded Polystyrene” or “EPS” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of Expanded Polystyrene insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

H. “Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the Food Provider's premises. For the purposes of this ordinance, Prepared Food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared Food may be eaten either on or off the premises, also known as "take-out food".

I. “Restaurant” means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.

J. “Retail Food Establishment” means any store, shop, sales outlet, or other establishment, other than a Restaurant, including but not limited to a grocery store, delicatessen, mobile food preparation and sale unit, drive-in, coffee shop, cafeteria, short-order cafe, luncheonette, grill, sandwich shop, hotel, motel, movie house, theatre, bed and breakfast inn, tavern, bar, cocktail lounge, nightclub, roadside stand, take-out Prepared Food place, industrial feeding establishment, catering kitchen, commissary, special event, food market, produce stand, food stand, or similar place in which food or drink is prepared for sale, or for service, on the premises or elsewhere, and any other establishment or operation where food is processed, prepared, stored, served or provided to Customers.

K. “Recyclable” means material that can be sorted, cleansed, and reconstituted using El Cerrito’s available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. “Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

L. “Reusable” means all materials in the product or package will be used more than once in its same form by the customer, food vendor or other reuse programs. Reusable food ware includes: food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor by the customer that is provided take-out containers. Reusable also includes durable

containers, packages or trays used on-premises or returnable containers brought back to the food vendor.

M. "Reusable Food Ware" means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for prolonged use, including but not limited to ceramic, glass, porcelain, and metal food ware.

8.24.040 – EPS Food Ware Prohibited.

A. Except as provided in this Chapter, Food Providers are prohibited from providing Prepared Food to Customers in Disposable Food Ware made from Expanded Polystyrene.

B. Except as provided in this Chapter, all City Facilities are prohibited from using Expanded Polystyrene Disposable Food Ware and all City Departments and Agencies will not purchase or acquire Expanded Polystyrene Disposable Food Ware for use at City Facilities or events.

C. Except as provided in this Chapter, all City franchisees, contractors, vendors and caterers doing business with the City shall be prohibited from using Expanded Polystyrene Disposable Food Ware in City Facilities, at City events or on City projects within the City of El Cerrito.

8.24.060 – Permitted Disposable Food Ware.

A. All Food Providers using any Disposable Food Ware will use Compostable, Recyclable or Reusable Food Ware. All Food Providers are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises. A Food Provider may price its products or services to customers in a manner to cover any cost differential.

B. All City Facilities using any Disposable Food Ware will use Compostable, Recyclable or Reusable Food Ware. All City Facilities are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises.

C. All City franchisees, contractors, vendors and caterers, when doing business with the City, will use Compostable, Recyclable or Reusable Food Ware. All City Facilities are strongly encouraged to use Reusable Food Ware in place of using Disposable Food Ware for all food served on-premises.

D. All individuals, entities or organizations using City Facilities for public or private events shall comply with the requirements in this Chapter.

8.24.080 – Exemptions.

A. Prepared Foods that are prepared or packaged outside the City of El Cerrito as well as Prepared Foods prepared and packaged in the City of El Cerrito for use outside of the City of El Cerrito are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of El Cerrito are encouraged to follow the provisions of this Chapter.

B. Food Providers may be exempted from the provisions of this Chapter for specific items or types of Disposable Food Ware if the City Manager or his/her designee finds that a suitable Compostable, Reusable or Recyclable alternative does not exist for a specific application and/or that imposing the requirements of this Chapter on that item or type of Disposable Food Ware would cause undue hardship.

C. Any Food Provider or City Facility may seek an exemption from the requirements of this Chapter by filing a request in writing with the City Manager. The City Manager may waive any specific requirement of this Chapter for a period of not more than one year if the Food Provider or City Facility seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship.

D. A Food Provider or City Facility granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the Food Provider or City Facility wishes to have the exemption extended. The City Manager's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

E. Expanded Polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

F. In a situation deemed by the City Manager or his/her designee to be an emergency, or in the event that a local emergency or disaster has been declared in effect, for the immediate preservation of the public peace, health or safety, City Facilities, Food Providers, City franchisees, contractors, vendors and caterers doing business with the City shall be exempt from the provisions of this Chapter.

8.24.140 – Enforcement and Violation – Penalty.

A. Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.

B. The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. The City Manager is authorized to promulgate

regulations and to take any and all other actions reasonable and necessary to enforce this Ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Food Provider during business hours. Other City of El Cerrito staff may assist with this enforcement responsibility by entering the premises of a Food Provider as part of their regular inspection functions and reporting any alleged violations to the City Manager.

SECTION 3. Compliance with the California Environmental Quality Act.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 6. Effective Date.

This Ordinance shall take effect on January 1, 2014 and be enforced on July 1, 2014; prior to the expiration of fifteen (15) days from the passage thereof, the Ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

The foregoing Ordinance was introduced at a regular meeting of the City Council on August 20, 2013, and passed by the following vote:

AYES:
NOES:
ABSENT:

Adopted and ordered published at a regular meeting of the City Council held on the Month, Day, 2013, and passed by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

APPROVED:

_____
Gregory B. Lyman, Mayor

ATTEST:

_____
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2013.

_____
Cheryl Morse, City Clerk