ORDINANCE NO. 2187

BEING AN ORDINANCE OF THE CITY OF CAMPBELL ADDING CHAPTER 6.30 TO THE CITY OF CAMPBELL MUNICIPAL CODE REGULATING THE DISTRIBUTION OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE BY FOOD VENDORS AND AMENDING SECTION 6.10.020 OF THE MUNICIPAL CODE TO DECLARE VIOLATIONS OF CHAPTER 6.30 TO BE A PUBLIC NUISANCE

The City Council of the City of Campbell does hereby ordain as follows:

SECTION ONE: That Chapter 6.30 is hereby added to Title 6 of the Campbell Municipal Code to read as follows:

CHAPTER 6.30
EXPANDED POLYSTYRENE

6.30.10 Findings and purpose

The City Council finds and determines that:

A. 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

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

C. 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

D. On November 18, 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

E. The City of Campbell 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.

6.30.020 Definitions.

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 Campbell 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.

6.30.110 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 June 1, 2015.

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

A. A food vendor may seek an exemption from the prohibition under Section 6.30.110 due to a “unique packaging hardship” under Subsection B of this Section or a “financial hardship” under Subsection C of this Section.

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 seeking an exemption shall submit a written application for an exemption on a form provided by the Environmental Programs Division of the Public Works Department. The Director of Public Works or his/her 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.

SECTION TWO: Paragraph (6)(Q) of Subsection (a) of Section 6.10.020 is hereby amended to read as follows:

(Q) A violation of any of the provisions of Campbell Municipal Code Chapters 5.24, 5.28, 5.29, 5.30, 5.36, 5.48, 5.58, 6.11, 6.20, 6.30, 11.04, 11.08, 11.12, 11.16, 11.32, 13.04, or 14.02

SECTION THREE: Severability. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

SECTION FOUR: It is the intent of the City Council of the City of Campbell to supplement State and Federal law and not to duplicate or contradict such law, and this ordinance shall be construed consistently with that intention. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses, or phrases be declared unconstitutional.

SECTION FIVE: This Ordinance shall become effective on June 1, 2015.

SECTION SIX: This Ordinance (or a summary thereof) shall be published, one time within fifteen (15) days upon passage and adoption, in the Campbell Express, a newspaper of general circulation in the City of Campbell, County of Santa Clara.

PASSED AND ADOPTED this ___ day of ______________ 2014, by the following roll call vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

APPROVED:

Richard M. Waterman, Mayor

ATTEST:

Anne Bybee, City Clerk