ORDINANCE NO. 820-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY ADDING CHAPTER 7.06 “CITY OF UNION CITY FOOD WARE ORDINANCE” TO THE MUNICIPAL CODE TO RESTRICT THE USE OF EXPANDED POLYSTYRENE FOOD WARE PRODUCTS

WHEREAS, expanded polystyrene (“EPS”) commonly used in food packaging is not biodegradable and is a common environmental pollutant; and

WHEREAS, EPS products are used for take-out food service ware by some restaurants and food vendors operating in the City of Union City; and

WHEREAS, there is no meaningful recycling of polystyrene foam take-out food service ware available locally and foam products are not accepted as part of the City’s curbside recycling collection program; and

WHEREAS, EPS disposable food ware products litter storm drains, streets, creeks, parks and other public places; and

WHEREAS, foam food ware typically breaks down into small pieces, which can be mistaken for food and ingested by wildlife thus harming them; and

WHEREAS, cost-effective, reusable and compostable food packaging products are readily available for most food service applications such as hot and cold cups, bowls, plates and hinged containers and are less toxic and more environmentally friendly than EPS; and

WHEREAS, a growing number of Union City businesses 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, approximately one hundred (100) cities and counties in California, including ten jurisdictions in Alameda County, have adopted regulations banning the use of foam food ware; and

WHEREAS, the amendments to the Municipal Code propose to add Chapter 7.06 as shown in Exhibit A, which exhibit is attached and incorporated herein by reference.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a
significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

**SECTION 3. Findings.** The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The City has a substantial interest in revising the Municipal Code to protect the City’s waterways, environment, residents, and visitors from the negative impacts of EPS food ware; and

2. The amendments are consistent with the City’s efforts to replace non-compostable, non-reusable, or non-recyclable food ware with compostable, reusable, or recyclable food ware products to further protect waterways and promote environmental sustainability.

**SECTION 4. Approval.** The City Council hereby approves the amendments to the Municipal Code, more particularly, adding Chapter 7.06, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk’s office during normal business hours.

**SECTION 5. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 6. Publication and effective date.** Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on June 28, 2016.

**EXHIBIT A**

Chapter 7.06

CITY OF UNION CITY FOOD WARE ORDINANCE

7.06.010 Title.
This chapter shall be known and may be cited as the “City of Union City Food Ware Ordinance.”

7.06.020 Purpose and Intent.
The purpose and intent of this chapter is to protect the City’s natural environment, its economy and the health of its residents and visitors by eliminating the use of expanded polystyrene food ware and to require the use of reusable, recyclable or compostable food containers by food providers, City departments, and City facilities served by contractors and at City-sponsored events.

7.06.030 Definitions.
For the purposes of this chapter, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:
A. “City” means the City of Union City.

B. “City department” means any governmental subdivision of the City.

C. “City facility” means any building, structure, vehicle, land or park owned and operated by the City.

D. “City facility user” means any person, society, association, organization or special events promoter who requires a permit to use a City facility or a permit or contract to use a plaza, sidewalk, or roadway. City facility user shall also include contractors.

E. “City Manager” means the City Manager of the City of Union City or City Manager’s designee.

F. “City-sponsored event” means any activity that is organized by the City and any private activity whose organizers voluntarily request any endorsement or recognition from the City that is unrelated to any requirements for such an event under applicable law.

G. “Compostable” means all materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner consistent with the composting facility used by the City’s franchisee.

H. “Contractor” means any individual, group, or organization that has a contract with the City for work or improvement to be performed, for a franchisee, concession, for grant monies, goods and services, or supplies to be donated or to be purchased at City expense.

I. “Disposable food ware” means single-use disposable products used in the restaurant and food service industry for serving or transporting prepared food and includes, but is not limited to, plates, cups, bowls, trays, and hinged or lidded containers. This definition does not include single-use straws, drink lids or utensils, or ice chests nor does it include disposable packaging for unprepared foods.
J. “Expanded polystyrene” or “EPS” means the thermoplastic petrochemical material utilizing the styrene monomer, which may be marked with the recycling symbol #6 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, sometimes referred to as Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation. In food service, expanded polystyrene is generally used to make cups, bowls, plates, trays, and clamshell containers intended for a single use. Expanded polystyrene does not include clear or solid polystyrene (oriented polystyrene).

K. “Food provider” means any establishment located within the City, or any establishment that sells or otherwise provides prepared food or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food market, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization which regularly provides food as part of its services.

L. “Prepared food” means any food or beverage prepared for consumption on or off a premises or lands using any cooking or food preparation technique, or any raw foods provided for consumption without requiring further food preparation. Prepared food does not include (1) uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation; or (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.

M. “Recyclable” means any material that is accepted by the City recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic that can be recycled, salvaged, processed, or marketed by any means other than landfilling or burning whether as fuel or otherwise, so that they are returned to use by society. For the purposes of this chapter, recyclable plastic does not include polystyrene foam labeled with resin symbol #6.

N. “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 plastic, ceramic, glass, porcelain, and metal food ware.

**7.06.040 Expanded Polystyrene Food Ware Prohibited.**

A. Food providers are prohibited from providing prepared food to customers in disposable food ware made from expanded polystyrene. Food providers are strongly encouraged to use reusable food ware in place of using disposable food ware.

B. City facility users are prohibited from using disposable food ware made from expanded polystyrene and all City departments will not purchase or acquire disposable food ware made from expanded polystyrene for use at City facilities or City-sponsored events. City
facility users are strongly encouraged to use reusable food ware in place of using disposable food ware for all food served on-premises.

C. Contractors are prohibited from using disposable food ware made from expanded polystyrene in City facilities or at City-sponsored events within the City.

**7.06.050 Required Use of Compostable or Recyclable Food Service Ware.**

A. Food providers shall only use recyclable or compostable food service ware.

B. City facility users shall only use recyclable or compostable food service ware.

**7.06.060 Exemptions.**

A. Foods prepackaged outside the City as well as prepared foods prepared and packaged in the City for use outside of the City are exempt from the provisions of this chapter. Purveyors of foods prepackaged outside the City are encouraged to follow these provisions as it is the City’s policy goal to eliminate the use of disposable food ware made from expanded polystyrene. The exemption under this section does not apply to food providers that provide prepared food for public consumption within the City.

B. Expanded polystyrene coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

C. Should the provisions of this chapter cause the food provider to experience undue hardship, or if a non-expanded polystyrene version of a necessary container is not available, the food provider may apply to the City Manager for an exemption from compliance.

D. The City Manager shall confirm the decision to grant or deny each exemption in writing and may approve an exemption request in whole or in part. A food provider or City facility user granted an exemption must annually reapply for an exemption and demonstrate continued undue hardship if the food provider or City facility user 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 final.

E. In a situation deemed by the City Manager 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 facility users, food providers, or contractors shall be exempt from the provisions of this chapter.

**7.06.070 Enforcement and Penalties.**

A. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this chapter, including, but not limited to,
investigating violations, issuing fines, and entering the premises of any food provider
during business hours

B. If a food provider, City facility user, or contractor is found to be in violation of this
chapter, the City Manager shall issue a written warning that a violation has occurred and
the potential penalties that will apply for future violations.

C. Any violation of this chapter that occurs after issuance of a written warning pursuant to
Section 7.06.070(B) shall be subject to administrative enforcement pursuant to Chapter
1.18.

D. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions
of this chapter.

7.04.080 Construction and Preemption.

This chapter and any of its provisions shall be null and void upon the adoption of any
state or federal law or regulation imposing the same, or essentially the same, limits on the use of
prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of
the city’s police power, to operate only upon its own officers, agents, employees and facilities
and other persons acting within its boundaries, and not to regulate inter-city or interstate
commerce. It shall be construed with that intent.

7.04.090 Operative Date of Chapter.

This chapter shall be operative on January 1, 2017.

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