

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH
STATE OF NEW JERSEY**

ORDINANCE NO. 2024-08

**ORDINANCE AMENDING CHAPTER 492: “PLASTICS AND POLYSTYRENE FOAM;
SINGLE USE” TO PROHIBIT THE DISTRIBUTION OF PLASTIC UTENSILS, CONDIMENT
PACKETS, NAPKINS, AND/OR EXTRA CONTAINERS WITH TAKE-OUT OR DELIVERY
ORDERS, UNLESS REQUESTED BY A CUSTOMER.**

WHEREAS, the Borough of Red Bank (the “Borough”) is a riverside community and has a cultural commitment to thriving and healthy waterways within its jurisdictional boundaries which, in turn, promotes the quality of life and the associated welfare of the Borough’s residents; and

WHEREAS, the Borough recognizes that the use of particular single-use plastics, including single-use plastic carryout bags, utensils, condiment packets, napkins, and carry-out containers, as well as single use expanded polystyrene (also commonly known as Styrofoam) cups and containers, presents significant ecological, environmental, and public health hazards and is increasingly creating economic burdens on the Borough; and

WHEREAS, the Borough previously adopted Chapter 492: “Plastics and Polystyrene Foam; Single Use” within its Borough Code to reduce the proliferation of disposable plastic bags and certain single-use plastic and polystyrene products within the Borough; and

WHEREAS, the Borough nonetheless continues to experience the detrimental effects of plastic and polystyrene products on the ecology and quality of its waterways; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, the Borough seeks to expand and clarify Borough Code Chapter 492: “Plastics and Polystyrene Foam; Single Use” to include prohibitions on the distribution of plastic utensils, condiment packets, napkins, and containers with take-out and delivery orders, unless requested by a customer;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Red Bank, County of Monmouth, State of New Jersey, that Chapter 492: “Plastics and Polystyrene Foam; Single Use” of the Borough’s Revised General Ordinances is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

CHAPTER 492: “PLASTICS AND POLYSTYRENE FOAM; SINGLE USE”

§ 492-1 Definitions.

Unless otherwise expressly stated, whenever used in this section, the following terms shall have the meanings set forth below:

ASTM STANDARD

Meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

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BOROUGH OF RED BANK CONTRACTOR

Any person or entity that has a contract with the Borough of Red Bank for work or improvement to be performed, for a franchise, concession, for grant monies, goods and services, or supplies to be purchased at the expense of the Borough, or to be paid out of monies deposited in or under the control of the Borough.

BOROUGH OF RED BANK FACILITY

Any building, structure or vehicle owned and operated by the Borough of Red Bank, its agents, agencies, and departments.

BUSINESS ESTABLISHMENT

Any commercial enterprise that provides carryout bags to its customers through its employees or independent contractors associated with the business. The term includes sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity, whether for profit or not for profit. This term is inclusive of any store or business which sells or offers goods or merchandise, located or operating within the Borough of Red Bank, including those referenced in "food or grocery establishment" and "food provider."

COMPOSTABLE

All the materials in the product or package, when composted in an industrial or municipal compost operation, will break down, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable food service ware must meet ASTM Standards for compostability, and any bioplastic or plastic-like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that the collector and processor can easily distinguish the ASTM standard compostable plastic from non-ASTM standard compostable plastic.

DISPOSABLE FOOD SERVICE WARE

Is interchangeable with "to go" packaging and "food packaging material" and includes, but is not limited to: all containers, clamshells, bowls, plates, trays, cartons, cups, utensils, napkins, condiment packets, straws, stirrers, napkins and other items designed for one-time use associated with prepared foods, including, without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by food providers.

EVENTS PROMOTER

An applicant for any event permit issued by the Borough or any Borough employee(s) responsible for any Borough-organized event.

FOOD OR GROCERY ESTABLISHMENT

All sales outlets, stores, shops, vehicles or other places of business located within the Borough which operate to sell or convey foods, or beverages, which foods or beverages are predominantly contained, wrapped or held in or on packaging. Food establishment shall include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale, including, but not limited to, any fixed or mobile restaurant, drive-in, convenience store, coffee shop, cafeteria, short-order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, 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, mobile food preparation

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unit, commissary, event, grocery store, public food market, produce stand, food stand, or similar place in or at 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, sold, or provided for the public and any organization, group or individual which provides food as part of its service.

FOOD PROVIDER

Any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the Borough of Red Bank that offers food or beverage to the public.

PERSON

An individual, business, event promoter, trust, firm, joint stock company, Corporation, non-profit, including a government corporation, partnership, or association.

POLYSTYRENE/PLASTIC FOAM

Blown expanded and extruded polystyrene (sometimes called Styrofoam™) or other plastic foams which are processed by any number of techniques, including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, egg cartons, coolers, ice chests, shipping boxes, packing peanuts, and beach or pool toys. The term "polystyrene" does not include clear or solid polystyrene known as "oriented polystyrene."

POLYSTYRENE/PLASTIC FOAM PRODUCTS

Any item such as coolers, ice chests, cups, bowls, plates, clamshells, shipping boxes, containers, cutlery, or any other merchandise containing polystyrene/plastic foam that is not wholly encapsulated or encased by a more durable material.

PREPARED FOOD

Food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the Borough. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

RECYCLABLE

Any material that is accepted by the Borough recycling program or the Monmouth County recycling program, including, but not limited to, paper, glass, aluminum, cardboard and plastic bottles, jars and tubs. This also means any approved alternative products which are accepted by the County's recycling centers.

REUSABLE CARRYOUT BAG

A carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- A. Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
- B. Has a handle;

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C. Is constructed out of any of the following materials:

- (1) Cloth, other fabric, or other materials whether woven or nonwoven; or
- (2) Recyclable plastic, with a minimum thickness of 2.25 mils; and
- (3) Has a minimum lifetime of 125 uses, which for purposes of this subsection means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

SINGLE-USE PLASTIC CARRYOUT BAG

A bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases, which is made predominantly of plastic derived from either petroleum or a biologically based source.

§ 492-2 Single-use plastic carryout bags prohibited.

- A. No business establishment or food or grocery establishment may provide single-use plastic carryout bags at any Borough facility, Borough-sponsored event, or any event held on Borough property.
- B. No business establishment or food or grocery establishment within the Borough limits may provide single-use plastic bags to its customers.
- C. Any business establishment providing single-use carry out bags shall use reusable bags or paper bags made from a minimum of 40% post-consumer recycled content.

§ 492-3 Polystyrene/plastic foam disposable food service ware, plastic utensils, condiment packets, napkins, and containers prohibited; conditions.

- A. Food providers within the Borough of Red Bank may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- B. Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all Borough of Red Bank facilities.
- C. Effective April 22, 2024, the provision of plastic utensils, condiment packets, napkins, and extra containers to take-out or delivery customers is prohibited, unless requested by the customer. Online ordering and delivery apps shall be set to a default to not provide plastic utensils, condiment packets, napkins, and/or extra containers unless the customer selects an option to request said items. Delivery and courier services shall not provide said items unless requested by the customer. These restrictions shall not apply to self-service stations within any food provider's premises or within any food or grocery establishment.
- ~~C~~D. Borough of Red Bank contractors in the performance of Borough contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.

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§ 492-4 Recyclable or compostable disposable food service ware permitted.

- A. All food or grocery establishments and food providers within the Borough of Red Bank utilizing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 492-6 and 492-7, and with the exception of drinking straws.
- B. All food providers may provide drinking straws only upon request of the customer.
- C. All Borough of Red Bank facilities utilizing disposable food service ware shall use products that are recyclable or compostable, with the exception of drinking straws.
- D. Borough of Red Bank contractors and events promoters utilizing disposable food service ware shall use recyclable or compostable products, with the exception of drinking straws, while performing under a Borough contract or permit.

§ 492-5 Prohibited sales.

No business establishment or event promoter within the Borough of Red Bank may sell, rent, or otherwise provide any polystyrene/plastic foam product which is not wholly encapsulated or encased within a more durable material, except as exempted in this section. This specifically includes, but is not limited to, cups, plates, bowls, clamshells, bags, and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, or packing peanuts.

§ 492-6 Exemptions.

- A. Products made from polystyrene/plastic foam which is wholly encapsulated or encased by a more durable material are exempt from the provisions of this chapter. Examples include surfboards, boats, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and durable coolers not principally composed of polystyrene/plastic foam.
- B. Construction products made from polystyrene/plastic foam are exempted from this section if the products are used in compliance with Borough Code and used in a manner preventing the polystyrene/plastic foam from being released into the environment.
- C. Emergency procurement. In an emergency situation and for the immediate preservation of the public health or safety, Borough facilities, food vendors, Borough franchises, contractors and vendors doing business with the Borough shall be exempt from the provisions of this chapter.
- D. Laundry, dry-cleaning bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste, although the Borough encourages the use of recyclable or compostable products throughout.
- E. Bags provided by hospitals, medical providers, physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical supplies or necessities in the course of treatment shall be exempt from this chapter.

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- F. Bags used by a customer inside a business establishment and even when intended for carry-out and off-premises use to:
 - (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases;
 - (4) Contain unwrapped prepared foods or bakery goods; or
 - (5) Contain bait and items of a similar nature used for recreational fishing and crabbing.
- G. Bags of any type that the customer brings to the store for their own use for carrying away from the store goods that are not placed in a bag provided by the store.
- H. Polystyrene and plastic foam trays used by food and grocery establishments for the packaging of meats, seafood, produce, and dairy products are exempt from the provisions of this chapter.
- I. Any product purchased, prepared or packaged outside the Borough of Red Bank and sold in or delivered into the Borough are exempt from the provisions of this chapter.

§ 492-7 Sunrise provisions.

- A. No summonses or other process shall be issued by the Borough, nor shall any penalties be enforced by the Municipal Court, for violations of this chapter, except for any such violation(s) occurring on or after September 1, 2020.
- B. No summonses or other process shall be issued by the Borough, nor shall any penalties be enforced by the Municipal Court, for violations of Section 492-3(C) of this chapter, except for any such violation(s) occurring on or after July 1, 2024.

§ 492-8 Enforcement; violations and penalties.

- A. The Code Enforcement Officer shall have primary responsibility for enforcement of this section. The Code Enforcement Officer is authorized to take any and all other actions reasonable and necessary to enforce this section, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours.
- B. If a Code Enforcement Officer determines that a violation of this section has occurred, he/she will issue a written warning notice to the owner or operator of the business establishment that a violation has occurred and the potential penalties that will apply for future violations.

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- C. Any business establishment that violates or fails to comply with any provisions of this section after a written warning notice has been issued for that violation shall be subject to a civil penalty that shall not exceed \$250 for a first violation; \$500 for a second violation within any twelve-month period; and \$1,500 for each additional violation within any twelve-month period. Every 30 days that a violation continues will constitute a separate offense.
- D. Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the Borough by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Borough may take action to recover the costs of the nuisance abatement.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Red Bank that this Ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

| INTRODUCTION | | | | | | COUNCILMEMBER | FINAL ADOPTION | | | | | |
|-----------------------------------|------|-----|-----|------|----|---|----------------|------|-----|-----|------|----|
| Moved | Sec. | Aye | Nay | Abs. | NP | | Moved | Sec. | Aye | Nay | Abs. | NP |
| | | x | | | | KRISTINA BONATAKIS | | | x | | | |
| | | | | | x | DAVID CASSIDY | | | x | | | |
| x | | x | | | | NANCY FACEY-BLACKWOOD | x | | x | | | |
| | x | x | | | | BEN FOREST | | x | x | | | |
| | | x | | | | LAURA JANNONE | | | x | | | |
| | | x | | | | KATE TRIGGIANO | | | x | | | |
| | | x | | | | MAYOR WILLIAM PORTMAN | | | x | | | |
| Introduced: February 22, 2024 | | | | | | I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Red Bank, County of Monmouth, State of New Jersey on the aforementioned date. | | | | | | |
| Final Adoption: March 14, 2024 | | | | | | | | | | | | |
| | | | | | | <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> Laura Reinertsen, Borough Clerk | | | | | | |