

BOROUGH OF STONE HARBOR
COUNTY OF CAPE MAY, NEW JERSEY
ORDINANCE NO. 1524

AN ORDINANCE AMENDING CHAPTER 466 SOLID WASTE; RECYCLING; DUMPING
BY ADDING A NEW ARTICLE PERTAINING TO ENVIRONMENTALLY ACCEPTABLE
PACKAGING AND PRODUCT

WHEREAS the Borough of Stone Harbor, County of Cape May, State of New Jersey has a duty to protect its natural environment, its economy, and the health of its citizens; and

WHEREAS, the Borough Council of the Borough of Stone Harbor desires to eliminate the use of polystyrene/plastic foam and single-use plastic products and other non-locally recyclable and non-properly compostable food packaging in order to protect the marine life and wild life of its surrounding waterways, maximize the operating life of landfills and lessen the economic and environmental costs of managing waste; and

WHEREAS, to discourage and decrease the use of certain expanded polystyrene food service products, single use plastic carryout bags, and disposable food service ware, i.e. plastic straws in the Borough, it is necessary to regulate such use; and

WHEREAS, regulating and eventually prohibiting the use of polystyrene/plastic foam take-out food packaging and replacing it with food service ware that is locally recyclable or compostable, and, restricting the use of polystyrene/plastic foam products that are not wholly encapsulated or encased by a more durable material will further protect the Borough, its marine life and wild life, its residents and visitors, and will support the Borough's goal of reducing waste and litter for a cleaner environment for generations to come.

NOW THEREFORE, The Borough of Stone Harbor, duly assembled, hereby ordains that the Borough Code of Ordinances be amended by amending Chapter 466: Solid Waste; Recycling; Dumping and adding Article VI: PERTAINING TO ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS which shall read as follows:

§ 19.01: DEFINITIONS

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

- (a) "ASTM Standard" means 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.
- (b) "Business Establishment" means 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 Stone Harbor, including those referenced in "Food or Grocery Establishment," and "Food Provider."
- (c) "Compostable" means 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 bio-plastic 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.

- (d) "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, 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.
- (e) "Events Promoter" means an applicant for any event permit issued by the Borough or any Borough employee(s) responsible for any Borough-organized event.
- (f) "Food or Grocery Establishment" means 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 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.
- (g) "Food Provider" means any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the Borough of Stone Harbor that offers food or beverage to the public.
- (h) "Person" means an individual, business, event promoter, trust, firm, joint stock company, Corporation, non-profit, including a government corporation, partnership, or association.
- (i) "Polystyrene/Plastic Foam" means 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 also includes clear or solid polystyrene which is known as "oriented polystyrene."
- (j) "Prepared Food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the Borough of Stone Harbor. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.
- (k) "Polystyrene/plastic foam products" means 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.
- (m) "Recyclable" means any material that is accepted by the Borough of Stone Harbor recycling program or the Cape May 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 recycling centers.
- (n) "Reusable carryout bag" means a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- i. displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled;
 - ii. has a handle;
 - iii. is constructed out of any of the following materials:
 - 1. Cloth, other washable fabric, or other durable materials whether woven or non-woven; 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.
- (o) "Single-Use Plastic Carryout Bag" means 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.
- (p) "Borough of Stone Harbor Contractor" means any person or entity that has a contract with the Borough of Stone Harbor 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 of Stone Harbor, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the Borough of Stone Harbor.
- (q) "Borough of Stone Harbor facility" means any building, structure or vehicle owned and operated by the Borough of Stone Harbor, its agents, agencies, and departments.

§ 19.02: SINGLE-USE CARRYOUT BAGS

- 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.

§ 19.03: POLYSTYRENE/PLASTIC FOAM DISPOSABLE FOOD SERVICE WARE

- a) Food Providers within the Borough of Stone Harbor 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 Stone Harbor facilities.
- c) Borough of Stone Harbor Contractors in the performance of Borough contracts and events promoters may not provide food in disposable food service ware that contains polystyrene/plastic foam.
- d)

§ 19.04: DISPOSABLE FOOD SERVICE WARE

- a) All Food or Grocery Establishments and Food Providers within the Borough of Stone Harbor utilizing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 19.06 and 19.07, with the exception of straws which cannot be made of plastic or compostable.
- b) All Food Providers may give straws, lids, cutlery, and to-go condiment packages upon request of the customer.

- c) All Borough of Stone Harbor facilities utilizing disposable food service ware shall use products that are recyclable or compostable with the exception of straws which cannot be made of plastic or compostable.
- d) Borough of Stone Harbor Contractors and events promoters utilizing disposable food

Service ware shall use recyclable or compostable product with the exception of straws which cannot be made of plastic or compostable while performing under a Borough of Stone Harbor contract or permit.

§19.05: PROHIBITED SALES

- a) No Business Establishment or event promoter within the Borough of Stone Harbor 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 Ordinance. 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.

§19.06: EXEMPTIONS FOR RECYCLABLE OR PROPERLY COMPOSTED FOOD SERVICE WARE AND OTHER POLYSTYRENE/PLASTIC FOAM PRODUCTS

- 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 ordinance 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, Hospital, and Medical Supply and Services 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 physicians, dentists, pharmacists or veterinarians to contain prescription drugs or other medical necessities;
- f) Bags used by a customer inside a business establishment to:
 - i. Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - ii. Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - iii. Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - iv. Contain unwrapped prepared foods or bakery goods;
- 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) Meat trays are exempt from the provisions of this Chapter.
- i) Any product purchased, prepared or packaged outside the Borough of Stone Harbor and sold in or delivered into the town are exempt from the provisions of this chapter.

§19.07: REQUESTS FOR EXEMPTION.

- a) The Public Works Committee may make a recommendation to Borough Council to exempt a Food or Grocery Establishment or Food Provider from the requirements set forth of this ordinance for up to a one-year period upon the Food Provider showing, in writing, that this ordinance would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances.
- b) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be recommended by the Public Works Committee if the Food or Grocery Establishment or Food Provider can demonstrate in writing a public health and safety requirement or medical necessity to use the product.
- c) An exemption application shall include all information necessary for the Public Works Committee to make a recommendation to Borough Council, including but not limited to documentation showing factual support for the claimed exemption. The Public Works Committee and Borough Council may require the applicant to provide additional information.
- d) The Borough Council may approve the exemption application in whole or in part, with or without conditions.

§19.08 ENFORCEMENT AND PENALTIES

- a) The Police Department and Code Enforcement Officer have primary responsibility for enforcement of this chapter. The Police Department and Code Enforcement Officer are authorized 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 business establishment during business hours.
- b) If a Police Officer or Code Enforcement Officer determines that a violation of this chapter 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.
- c) Any business establishment that violates or fails to comply with any of the provisions of this chapter after a written warning notice has been issued for that violation shall be subject to a civil penalty that shall not exceed Two Hundred (\$200.00) Dollars for a first violation; Three Hundred Fifty (\$350.00) Dollars for a second violation within any twelve (12) month period; and Five Hundred (\$500.00) Dollars for each additional violation within any twelve (12) month period. Every thirty (30) days that a violation continues will constitute a separate offense.
- d) In addition to the penalties set forth in this section, repeated violations of this chapter by a person who owns, manages, operates, is a business agent of, or otherwise controls a business establishment may result in the suspension or revocation of the business license issued to the premises on which the violations occurred. No Borough business license shall be issued or renewed until all fines outstanding against the applicant for violations of this chapter are paid in full.
- e) 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.

§19.09: EFFECTIVE DATE AND WAIVERS

All of the requirements set forth in this chapter shall take effect on June 1, 2019.

SIGNED, SEALED AND DELIVERED THIS _____ DAY OF _____, 2018.
