

## ORDINANCE NO. 2019-41

### **ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY SUPPLEMENTING THE BOROUGH'S REVISED GENERAL ORDINANCES TO INSERT NEW CHAPTER 492: "PLASTICS AND POLYSTYRENE FOAM (SINGLE-USE)" TO PROHIBIT THE USE AND DISTRIBUTION OF SINGLE-USE PLASTIC BAGS, PLASTIC STRAWS AND POLYSTYRENE FOAM CONTAINERS BY BUSINESSES**

**WHEREAS**, the Governing Body of the Borough of Red Bank (the "Borough") believes it has a duty to investigate and implement all necessary and proper steps the Borough can take to protect the environment and the public health, welfare, and safety, especially given the Borough's position as a riverside community; and

**WHEREAS**, in the United States alone, according to the EPA, over 380 billion plastic bags and wraps are used each year, approximately 40% of the bags used are single-use plastic bags, and the 380 billion plastic bags require an estimated 12 million barrels of oil to create; and

**WHEREAS**, approximately 19 billion pounds of plastic garbage end up in the Earth's oceans each year, which is approximately an area 34 times the size of Manhattan covered in ankle-deep plastic waste; and

**WHEREAS**, no body of water, waterway, beach, or shoreline is unaffected by this pollution, as ocean currents and waterways that flow into the oceans can transport plastic waste tossed into the Navesink River all the way to Australia and vice versa; and

**WHEREAS**, studies have demonstrated that over decades of sunlight and pounding waves, plastic breaks down into microplastics that measure 5 millimeters or less, which are ingested by shrimp, plankton, fish, birds, turtles, other sea animals, and eventually, humans, the effects of which to the ecosystem and food chain are not yet clear; and

**WHEREAS**, it is beyond dispute that the use of single-use plastic bags, plastic straws, and polystyrene foam containers have a severe and negative environmental impact on the local and global environment as a result of the greenhouse gas emissions emitted to produce such single-use items, the land-based and ocean-based pollution created, the hazards posed to wildlife, the blocking of storm drains by plastic, the hazards posed to sources of water for humans, and the negative impact on the ecosystem and food chain as a whole; and

**WHEREAS**, the Borough's taxpayers currently bear the costs associated with the negative effects of single-use plastic bags, plastic straws, and polystyrene foam containers on the solid waste stream, drainage, litter, and the negative consequences of the foregoing environmental impacts; and

**WHEREAS**, the Borough seeks, to the fullest extent of its jurisdiction and authority, to conserve resources, reduce greenhouse gas emissions in furtherance of the Paris Agreement, reduce waste and litter, and to protect the public health, welfare, and safety, which includes the protection of the environment, waterways, and wildlife, in order to attempt to protect and increase the quality of life for the Borough's residents and visitors; and

**WHEREAS**, studies document and participating municipalities report that prohibiting the use and distribution of single-use plastic bags, plastic straws, and polystyrene foam containers at businesses will dramatically reduce the use of those polluting items; and

**WHEREAS**, over 150 states, municipalities, and counties in the United States presently either ban or require fees for the sale and use of plastic bags; and

**WHEREAS**, based upon the foregoing, the Governing Body of the Borough of Red Bank that a prohibition on the use and distribution of single-use plastic bags, plastic straws, and polystyrene foam containers by businesses is appropriate and will incentivize the use of reusable and/or recyclable alternatives;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Red Bank, County of Monmouth, State of New Jersey, that the Borough's Revised General Ordinances is amended to include new Chapter 492: "Plastics and Polystyrene Foam (Single-Use)" as follows:

## **CHAPTER 492: SINGLE-USE 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** 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.

**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 Red Bank, including those referenced in "Food or Grocery Establishment," and "Food Provider."

**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.

**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.

**Events Promoter** means 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** 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.

**Food Provider** means 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** means an individual, business, event promoter, trust, firm, joint stock company, Corporation, non-profit, including a government corporation, partnership, or association.

**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" does not include clear or solid polystyrene known as "oriented polystyrene."

**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.

**Prepared Food** means 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** means 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** means 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;
- c. Is constructed out of any of the following materials:
  1. Cloth, other fabric, or other 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.

**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.

**Borough of Red Bank Contractor** means 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** means any building, structure or vehicle owned and operated by the Borough of Red Bank, its agents, agencies, and departments.

- 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 forty (40%) percent post-consumer recycled content.

**§ 492-3 Polystyrene/Plastic Foam Disposable Food Service Ware Prohibited.**

- 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. 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.

**§ 492-4 Disposable Food Service Ware.**

- 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 subsections 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 product, 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 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 section. 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 section.
- 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 section;
- 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; or
  - 4. Contain unwrapped prepared foods or bakery goods;
  - 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 section.
- i. Any product purchased, prepared or packaged outside the Borough of Red Bank and sold in or delivered into the town are exempt from the provisions of this section.

**§ 492-7 Sunrise Provision.**

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 Section, except for any such violation(s) occurring on or after September 1, 2020.

**§ 492-8 Enforcement 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.
- 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 two-hundred-fifty (\$250.00) dollars for a first violation; five-hundred (\$500.00) dollars for a second violation within any twelve (12) month period; and one-thousand-five-hundred (\$1,500.00) 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. Violation of this section 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 Governing Body 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 Governing Body 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 Governing Body of the Borough of Red Bank that this Ordinance shall take effect immediately upon its passage and adoption according to law.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin	Second	X			
Councilwoman Triggiano	Motion	X			
Councilman Ballard		X			
Councilman Yngstrom		X			
Councilman Zipprich		X			
Councilwoman Horgan		X			

First Reading/Introduction: July 24, 2019

Public Hearing/Adoption: August 21, 2019

I hereby certify the above to be a true copy.

*Pamela Borghi*

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Pamela Borghi, Municipal Clerk