

DRAFT

TO AMEND THE CODE OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CHAPTER 14, TO ADD A NEW ARTICLE V PERTAINING TO ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS

WHEREAS, the City of Charleston has a duty to protect its natural environment, its economy, and the health of its citizens;

WHEREAS, plastic bags, first introduced in the 1950s, have since developed into a global scourge, littering streets, parks, public squares, roadways, clogging sewer drains and amassing in landfills. Plastic bags are ingested by animals and marine life, and in recent years, they are so prevalent that they now comprise a significant portion of the plastic and other garbage that has collected in huge ocean gyres.

WHEREAS, the City of Charleston is desirous of eliminating 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 wildlife of its surrounding waterways, maximize the operating life of landfills, and lessen the economic and environmental costs of managing waste;

WHEREAS, countries around the world, including, the United States, Canada, Argentina, Brazil, Chile, Colombia, China, India, Australia, Greece, Ireland, Italy, England, Wales, Netherlands, Scotland, Germany, Israel, South Africa, Rwanda, Kenya, Congo, Japan, Taiwan and others have taken measures to reduce plastic bag use;

WHEREAS, to discourage and decrease the use of certain expanded polystyrene food service products, single use plastic carryout bags, and disposable food service ware, 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 City, its marine life and wildlife, its residents and visitors, and will support the City's goal of reducing waste and litter for a cleaner environment for generations to come.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. Chapter 14 of the Code of the City of Charleston is hereby amended by adding thereto a new Article V which shall read as follows:

ARTICLE V. ENVIRONMENTALLY ACCEPTABLE PACKAGING AND PRODUCTS

Sec. 14-53. DEFINITIONS.

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

AFFORDABLE shall mean that a compostable or recyclable product may cost up to 15% more than the purchase cost of the non-compostable or nonrecyclable alternative(s) and not be regarded, on balance, as exorbitant, overpriced, unreasonable or invaluable.

ASTM STANDARD shall mean 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 shall mean 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 City, including those referenced in FOOD OR GROCERY ESTABLISHMENT and FOOD PROVIDER.

CITY OF CHARLESTON FACILITY shall mean any building, structure or vehicle owned and operated by the City of Charleston, its agents, agencies, and departments.

COMPOSTABLE shall mean 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. Compostable products are considered compostable under this section only if a business establishment or food or grocery establishment using the products is composting them with an industrial or municipal compost operation.

DISPOSABLE FOOD SERVICE WARE 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, cutlery 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 shall mean an applicant for any event permit issued by the City.

FOOD OR GROCERY ESTABLISHMENT shall mean all sales outlets, stores, shops, vehicles or other places of business located within the City 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, takeout 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 shall mean any vendor, business, organization, entity, group, or individual, including food establishments, as defined herein, located in the City that offers food or beverage to the public.

PERSON shall mean an individual, business, event promoter, trust, firm, joint stock company, corporation, non-profit, partnership, or association.

POLYSTERENE/PLASTIC FOAM shall mean 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.

POLYSTYRENE/PLASTIC FOAM PRODUCTS shall mean 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 shall mean food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. PREPARED FOOD does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

RECYCLABLE shall mean any material that is accepted by the Charleston 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.

REUSABLE CARRYOUT BAG shall mean a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

- (1) Displays in a highly visible manner on the bag exterior language describing the bag's ability to be reused and recycled;
- (2) Has a handle;
- (3) Is constructed out of any of the following materials:
 - (a) Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - (b) Recyclable plastic, with a minimum thickness of 2.25 mils; and
 - (c) Has a minimum lifetime of 125 uses, which for purposes of this section 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 a onetime use to transport purchases, which is made predominantly of plastic derived from either petroleum or a biologically-based source.

Sec. 14-54. REGULATIONS.

- (A) No business establishment or food or grocery establishment may provide single-use plastic carryout bags at any City of Charleston facility, City sponsored event, or any event held on City owned property.
- (B) No business establishment or food or grocery establishment within the City of Charleston limits may provide single-use plastic carryout bags to its customers.
- (C) Food providers within the City of Charleston may not provide food in any disposable food service ware that contains polystyrene/plastic foam.
- (D) Disposable food service ware that contains polystyrene/plastic foam is prohibited from use in all City of Charleston facilities.
- (E) All food or grocery establishments, food providers and event promoters within the City of Charleston utilizing, selling or otherwise providing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 14-55 and 14-56.
- (F) No business establishment or event promoter or food or grocery establishment within the City of Charleston 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 Article. 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.

Sec. 14-55. 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 Article. 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 Article if the products are used in compliance with the City of Charleston 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 peace, health or safety, City of Charleston facilities, food vendors, City franchises, contractors and vendors doing business with the City of Charleston shall be exempt from the provisions of this Article;
- (D) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste; although the City of Charleston 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:
 - (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;
- (G) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items;
- (H) 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;

- (I) Meat trays, plastic drink lids, to-go condiment packages and cutlery (i.e.: forks, spoons, knives) are exempt from the provisions of this Article;
- (J) Plastic drinking straws provided upon customer request, or provided in a self-serve station, or provided as part of a drive-thru order are exempt from the provisions of this Article; and
- (K) Any product purchased, prepared or packaged outside the City of Charleston and sold in or delivered into the City of Charleston are exempt from the provisions of this Article.

Sec. 14-56. REQUESTS FOR EXEMPTION.

- (A) The Public Works and Utilities Committee may exempt a food or grocery establishment or food provider from the requirements set forth in this Article for up to a one-year period upon the food provider showing, in writing, that this Article would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Public Works and Utilities Committee shall put the decision to grant or deny up to a one-year exemption in writing, however the decision may be appealed to City Council.
- (B) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the Public Works and Utilities 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. The Public Works and Utilities Committee shall put the decision to grant or deny the exemption in writing and the decision may be appealed to City Council.
- (C) An exemption application shall include all information necessary for the Public Works and Utilities Committee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Public Works and Utilities Committee may require the applicant to provide additional information.
- (D) The Public Works and Utilities Committee may approve the exemption application in whole or in part, with or without conditions.

Sec. 14-57. ENFORCEMENT AND PENALTIES.

- (A) The Livability and Tourism Department has primary responsibility for enforcement of this Article. The Livability and Tourism Department is authorized to take any and all other actions reasonable and necessary to enforce this Article, including, but not limited to, investigating violations, entering the premises of any business establishment during business hours.
- (B) If a code enforcement officer determines that a violation of this Article 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 fines that will apply for future violations.
- (C) Any business establishment that violates or fails to comply with any of the provisions of this Article after a written warning notice has been issued for that violation shall be subject to a fine that shall not exceed \$200 for a first violation; \$350 for a second violation within any 12-month period; and \$500 for each additional violation within any 12- month period. Every 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 Article 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 City of Charleston business license shall be issued or renewed until all fines outstanding against the applicant for violations of this Article are paid in full.
- (E) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

Section 2. Severability. If any subsection, sentence, clause, phrase, or word of this Ordinance be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall not affect the validity or the effectiveness of the remaining portions of this Ordinance or any part thereof which can be given meaning without the offensive subsection, sentence, clause, phrase or word.

Section 3. This Ordinance shall become effective one year from the date of ratification.

Ratified in City Council this _____ day of _____ in the Year of Our Lord, 2018, in the _____ Year of Independence of the United States of America.

By:

John J. Tecklenburg
Mayor, City of Charleston

ATTEST:

Vanessa Turner-Maybank
Clerk of Council

