

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE No. 779-2018

SUBJECT: AN ORDINANCE PREVENTING THE SALE, USE OR DISTRIBUTION OF CERTAIN PLASTIC ITEMS DEEMED TO CONSTITUTE A THREAT TO THE ENVIRONMENT AND AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF AVALON

WHEREAS, the Borough Council intends to amend and supplement the Code of the Borough of Avalon for the reasons and in the manner hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL, the Governing Body of the Borough of Avalon in the County of Cape May and State of New Jersey as follows:

Section 1. Chapter 17 of the Avalon Borough Code, 2013 shall hereafter be entitled "SOLID WASTE MANAGEMENT AND MANDATORY RECYCLING".

Section 2. Those provision of the Avalon Borough Code currently contained within Chapter 18 entitled "HEALTH AND SAFETY" and identified as Section 18-4 entitled "SOLID WASTE" are hereby transferred to and shall become part of Chapter 17 and shall hereafter be numbered and identified as follows:

17-7 SOLID WASTE

- 17-7.1 Containers or Receptacles** (former section 18-4.1)
- 17-7.2 Number of Containers** (former section 18-4.2)
- 17-7.3 Dumpsters** (former section 18-4.3)
- 17-7.4 Collection Schedules; Authority to Adopt Rules and Regulations; Bulk Trash** (former section 18-4.4)
- 17-7.5 Bulk Trash** (former section 18-4.5)
- 17-7.6 Prohibition of the Collection of Waste Mixed with Recyclable Materials.** (former section 18-4.6)
- 17-7.7 Rules and Regulations** (former section 18-4.7)
- 17-7.8 Violations and Penalty** (former section 18-4.8)
- 17-7.9 Enforcement** (former section 18-4.9)

Section 3. Chapter 17 (Solid Waste Management and Mandatory Recycling) Section 17-1 (Mandatory Recycling) of the Code of the Borough of Avalon is amended and supplemented by adding a new section as follows:

17-6 USE OF POLYSTYRENE/PLASTIC FOAM AND SINGLE-USE PLASTIC PRODUCTS PROHIBITED

17-6.1 STATEMENT OF POLICY AND DETERMINATIONS OF FACT

- A. WHEREAS the Borough of Avalon, has a duty to protect its natural environment, its economy, and the health of its citizens; and
- B. WHEREAS, the Borough Council of the Borough of Avalon 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

- C. 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
- D. 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.

17-6.2 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 Avalon, 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 Avalon 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 Avalon. 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.

(l) **"Recyclable"** means any material that is accepted by the Borough of Avalon 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.

(m) **"Reusable carryout bag"** means 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; or
 - 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 subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

(n) **"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.

(o) **"Borough of Avalon Contractor"** means any person or entity that has a contract with the Borough of Avalon 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 Avalon, 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 Avalon.

(p) **"Borough of Avalon facility"** means any building, structure or vehicle owned and operated by the Borough of Avalon, its agents, agencies, and departments.

17-6.3 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.

17-6.4 POLYSTYRENE/PLASTIC FOAM DISPOSABLE FOOD SERVICE WARE

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

17-6.5 DISPOSABLE FOOD SERVICE WARE

- a) All Food or Grocery Establishments and Food Providers within the Borough of Avalon utilizing disposable food service ware shall use recyclable or compostable products, subject to the provisions of §§ 17-6.7 and 17-6.8, 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 Avalon 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 Avalon 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 Avalon contract or permit.

17-6.6 PROHIBITED SALES

a) No Business Establishment or event promoter within the Borough of Avalon 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.

17-6.7 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 and even when intended for carry-out and off premises use 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;
 - v. 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) Meat trays are exempt from the provisions of this Chapter.
- i) Any product purchased, prepared or packaged outside the Borough of Avalon and sold in or delivered into the town are exempt from the provisions of this chapter.

17-6.8 REQUESTS FOR EXEMPTION.

Requests for an exemption from this Chapter for hardship or other unique or unforeseeable circumstances may be submitted in accordance with the provisions of this section.

Such applications shall be submitted to a Review Committee which shall consist of the Business Administrator, the Director or Assistant Director of the Department of Public Works and Utilities, and the Chief of Police or his designee.

The Committee may, in its discretion, meet with the party requesting an exemption and may consult such other consultants or experts it deems necessary provided that the exemption applicant shall have the right to be present during any such consultation. Following a review of the written application, and following a meeting with the exemption applicant or other consultant, the Committee shall render a decision in accordance with the following:

- a) The Review Committee may 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. The Review Committee shall within a reasonable period of time, render a written decision, granting or denying the exemption request for a period not to exceed one year
- b) Exemptions to allow for the sale or provision of polystyrene/plastic foam products may be granted by the Review 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 Review Committee shall within a reasonable period of time, render a written decision, granting or denying the exemption request.
- c) An exemption application shall include all information necessary for the Review Committee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Review Committee may require the applicant to provide additional information as the Committee deems reasonably necessary to make a determination on the exemption request.
- d) The Review Committee may approve the exemption application in whole or in part, with or without conditions.
- e) Any decision by the Review Committee under this subsection may be appealed to Borough Council by the exemption applicant or other interested party. Any such appeal must be filed with Borough Council by filing a written notice of appeal with the Borough Clerk stating the reasons for the appeal, stating why the decision of the Review Committee should be modified or rejected, and any other information deemed relevant by the party appealing. The appealing party shall include with any such appeal all documents that were filed with the Review Committee. Such appeal shall be filed not later than thirty (30) calendar days from the date of decision of the Review Committee, or the appeal shall be time-barred. Borough Council shall hear and decide the appeal with sixty (60) days of its filing.

As used in this section, the term "hardship" shall mean any occurrence or event which is extraordinary in its nature and scope which was not foreseeable through the use of ordinary prudence and diligence and which is unique to a particular exemption-applicant, and the reason or reasons justifying an exemption must be beyond the exemption-applicant's control. An exemption shall only be granted by the Review Committee in the exercise of its discretion for good cause and then only when there is

no other reasonable or practical alternative and where the denial of an exemption would result in serious and undue hardship, financial or otherwise to the exemption-applicant.

An exemption, if granted, shall be for the least amount of time reasonably necessary to alleviate the occurrence or event up to a maximum period of one year and, further provided however, that there may be only one exemption granted to any applicant under the circumstances set forth herein.

An exemption shall not be granted for negligence or oversight on the part of the exemption-applicant.

17-6.9 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) 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.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 5. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 6: EFFECTIVE DATE: This Ordinance shall take effect on and after June 1, 2019 upon final adoption and publication as required by law.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on August 8, 2018. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 22nd day of August, 2018 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

MARIE J. HOOD, Borough Clerk