

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

ORDINANCE NO. 2023- ____

**AN ORDINANCE PROHIBITING THE USE OF SINGLE-USE PLASTIC AND
POLYSTYRENE PRODUCTS IN SANTA FE COUNTY; IMPOSING AN
ENVIRONMENTAL SERVICE FEE ON SALES OF PAPER BAGS; ENCOURAGING
USE OF ALTERNATIVE FOODWARE PRODUCTS AND REUSABLE BAGS;
PROHIBITING THE INTENTIONAL RELEASE OF HELIUM BALLOONS, PROVIDING
EXEMPTIONS; ESTABLISHING ENFORCEMENT AND PENALTIES FOR
VIOLATION**

**BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY:**

Sec. (X-X) SHORT TITLE; PURPOSE.

A. This Ordinance shall be cited as the " Single- Use Plastic Product Ordinance."

Sec. (X-X). --DECLARATION OF POLICY AND FINDINGS (Reference Memorandum and Resolution 2022-031)

This country, and our entire globe, is being severely impacted by plastic pollution. Experts estimate that, global plastic production will triple, reaching 1.3 billion tons by 2030, and that by 2050, the world's oceans will contain more plastic waste than fish (by weight). (Needs citation reference) Thousands of single-use plastic bags, expanded polystyrene containers and other single-use plastic and polystyrene products contribute to public litter, and deteriorate the health of our ecosystem. A plastic bag has on average, a 12-minute lifespan from when it's initially used by a customer at a retail establishment, to the time of being discarded. It is estimated that those same plastic bags may persist in the environment for hundreds of years while they photodegrade, breaking down into micro-plastics that have been shown to harm wildlife and human reproductive health. (Memorandum, May 10, to BCC requesting approval for SUPP working group.)

Sec. (X-X). --Purpose "The production and disposal of single-use plastic bags, single-use polystyrene containers, single-use food-ware products and intentionally released balloons create significant environmental impacts including the contamination of the environment, ingestion and entanglement by wildlife, and widespread litter. Single-use polystyrene containers create non-

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recyclable and non-degradable refuse streams while more environmentally sensitive alternatives are available. The purpose of this article is to protect and enhance the county's unique and precious environment, wildlife, and beauty through the reduction of single-use non-compostable or non-recyclable bags and containers, and to encourage the use of reusable or sustainable options." (Bernalillo Planning Ordinance Article X.-Single-Use Plastic Bags and Polystyrene Containers.)

APPLICABILITY ~~—who does this apply to?~~ Applicable to all retail establishments as outlined within this ordinance within areas of Santa Fe County under Santa Fe County's jurisdiction.

Sec. (X-X). --Definitions

Balloon – an inflatable object made from the following materials, including but not limited to: plastic, latex, Mylar, metallized nylon, and metallized plastic.

Condiment packets-metal or plastic containers which hold catsup, mayonnaise, and other sauces or spices.

Disposable Food or Beverage Packaging – a. A bowl, carton, clamshell container, cup, plate, lid, straw, tray, utensil or other item designed for one-time use to package, contain, or aid in the consumption of foods or beverages for transportation, sale, or distribution; or b. All packaging used to contain foods and beverages prepared by food or beverage vendors, including take-out food and beverages, and leftovers from partially-consumed meals.

Expanded polystyrene plate, cup, or food container-a product made of expanded polystyrene foam that is manufactured, sold or provided by a retail business, including a grocery store, restaurant, food trucks or fast food operation, to a customer for the sole purpose of being utilized once and then disposed of by the end user. This includes products intended for use on-site at a retail establishment, food boxes manufactured for single items, such as hamburgers, and larger take-out containers and take-home food cartons. (Taos Ordinance 20-05)

Plastic - means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms, including material derived from either petroleum or a biologically based polymer, such as corn or other plant sources

Plastic splash guards-a device that fits into the sip-hole of a beverage container lid, intended to prevent a beverage from splashing, that is made of plastic and designed as a single-use product.

Plastic utensils - service ware such as knife, fork, spoon made of plastic.

Pre-check out bags mean single use plastic bags provided to customers for: (a) loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies or small hardware items; (b) uncooked meat, poultry or seafood;

Recyclable cardboard box means a box made of non-waxed cardboard or paper;

Recycled content paper bag means a paper bag that contains at minimum forty percent post-consumer recycled content and is one hundred percent recyclable;

Reusable carryout bag means a bag that is designed and manufactured for multiple uses, is made of cloth or other machine-washable fabric and has stitched handles; or a polypropylene or recycled-content polyethylene terephthalate bag that has stitched handles

Retail establishment-is any retail business including, but not limited to, a convenience store, restaurant, grocery store, pharmacy, home improvement stores, liquor stores, gas stations, seasonal or temporary business, farmers market or farm stand, food delivery service providers, and seller of merchandise and dry goods to consumer. For purposes of this article, food banks and dry cleaners are not defined as retail establishments.

Single-use plastic bag-a carryout bag made from plastic that is provided to a customer at the point of sale for the purpose of transporting groceries, food or other goods and is not specifically designed and manufactured for multiple reuse.

Single-use plastic stirrer – The term “single-use plastic stirrer” means a device that is used to mix beverages and designed as a single-use product made of plastic.

Single-use plastic straw – a. IN GENERAL – The term “single-use plastic straw” means a single-use, disposable tube made of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from a container to the mouth of the person drinking the beverage. b.

~~EXCEPTION – The term “single-use plastic straw” shall not include straws made from non-plastic materials, including, but not limited to metal, glass, paper, pasta, sugar cane, wood, or bamboo;~~

Sec. (X-X). – Prohibitions of each item & Exemptions

1. **Single-use plastic bag**-Retail establishments, food providers and entities that deliver goods are prohibited from making available or delivering goods in a single-use plastic bag or any other bag or box that is not a reusable carryout bag, recycled content paper bag or recyclable cardboard box. Retail ~~sales~~ establishments shall charge an environmental service fee no less than \$.10 fee for the recycled-content paper bags. Except that retail establishments shall not collect the environmental services fee from any persons with a voucher or electronic benefits card issued under Women, Infants and Children Program (WIC), the Emergency Food Assistance Program (TEFAP), Temporary Assistant to Needy Families Program (TANF) or the federal Supplemental Nutrition Assistance Program (SNAP) also known as basic food stamps.
 - a. Retail establishments shall indicate on the customer transaction receipt the number of recycled content paper bags provided and the total amount of the environmental service fee charged.
 - b. Ten percent (10%) of the environmental service fee collected by a retail establishment shall be retained for administrative costs incurred by the collection and reporting of the environmental service fee to the county. The remainder of the environmental service fee collected shall be transmitted to the county of Santa Fe. The county shall dedicate the environmental service fees towards environmental and sustainability educational

programs and services provided to the public, and also towards the purchase of reusable bags to be provided to the public, free of charge.

- c. It shall be a violation of this Ordinance for any retail establishment to pay or otherwise reimburse a customer for any portion of the environmental service fee.

The prohibition of Subsection ___ of this section does not apply to:

- (1) pre-check out bags provided to customers for: (a) loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies or small hardware items; (b) uncooked meat, poultry or seafood; or
- (c) prepared takeout food with a high liquid content that is intended for consumption away from a restaurant's or food provider's premises;
- (2) laundry, dry cleaning or garment bags, including bags provided by hotels to guests to contain wet or dirty clothing;
- (3) bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste;
- (4) bags used to contain or transport live animals, such as fish or insects sold in pet stores;
- (5) bags used to transport chemical pesticides, drain-cleaning chemicals or other ~~caustic~~ dangerous chemicals sold at the retail level;
- (6) any bag similar to those exempted by this subsection, as determined by the Santa Fe County Commission

2. Expanded polystyrene plate, cup or food container-

~~1.~~ A retail establishment shall not provide or sell to any customer, singularly or in bulk, any expanded polystyrene cup, plate, or food container.

~~The following shall be effective immediately subject to this subsection:~~

~~4.~~ No retail establishment or food or beverage vendor shall serve or sell prepared food or beverage in polystyrene packaging and shall not package eggs, bakery products, fruits or vegetables, or other prepared food in polystyrene packaging;

The prohibition of Subsection ___ of this section does not apply to:

- a. Food or beverages that have been pre-packaged in expanded polystyrene and provided to a retail establishment by a vendor located outside of Santa Fe County.
- ~~b. Meat and fish packaged on an expanded polystyrene plate, cup or food container~~

2.3. Single-use plastic stirrer and plastic splash guards SINGLE-USE PLASTIC STIRRER

A retail establishment shall not provide a single-use plastic stirrer or a plastic splash guard to a customer.

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~~3.4. Single-use plastic straw, plastic utensils, and condiment packets~~
~~INGLE-USE PLASTIC STRAW, Plastic Utensils, and Condiment Packets~~ – A retail establishment shall not provide a single-use plastic straw, plastic utensils or condiment packets to a customer for in-house or take-out or delivery orders, unless that customer verbally or electronically requests a single-use plastic straw, plastic utensils, or condiment packets.

Commented [SP1]: Include ADA Compliant issues research language - research what other states have done

The prohibition of Subsection ___ of this section does not apply to:

- a. Retail establishments providing food for consumption both on-site or off-site with self-service stations in-house

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~~4.5. Intentional outdoor balloon releases~~—No person, nonprofit organization, firm or corporation, including the state (higher level government enforceable?) and its political subdivisions, shall knowingly release or intentionally cause to be released outdoors ~~aaa~~ plastic balloon and filled with helium or a gas lighter than air.

The prohibition of Subsection ___ of this section does not apply to:

- i. Balloons which are used to carry scientific instruments during the performance of an experiment ~~which are used for the purpose of carrying scientific instrumentation during the performance of an experiment or test by a person on behalf of an experiment or test or by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or for or meteorological purposes;~~ or
- ii. Occupied hot air balloons

~~5. DISPOSABLE FOOD OR BEVERAGE PACKAGING~~

~~All Disposable food or beverage packaging provided or sold by retail establishments within Santa Fe County must be free from Per- and Polyfluoroalkyl Substances (PFAS) and/or certified compostable by the Biodegradable Products Institute.~~

Condiments packets—See above

Sec. (X-X). --Enforcement & Effective Date

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If Code Enforcement confirms that a violation has occurred the Code Enforcement Officer may issue a Notice of Violation to the offending party that indicates the nature of the violation. If the offending party agrees to remedy the violation, then the offending party will have fifteen (15) working days to come into compliance. If the offending party refuses to remedy the violation, the Code Enforcement Officer may issue a final Notice of Violation and file a criminal complaint in Court seeking penalties set forth in Section 14.4. of the SLDC.

The prohibition of Subsection of this section does not apply to:

b. Public entities may provide single-use plastic straws, plastic utensils, and condiment packets to qualified individuals with disabilities.

If Code Enforcement- determines that a violation of this ordinance has occurred, the officer shall give a formal written notice to the retail establishment owner or manager or operator. The notice must note that the that the violation must cease immediately. confirms that a violation has occurred the officer shall give written notice to the owner of the property, the owner's agent, and or the person committing the violation is occurring and must immediately cease.

- (a) Any owner of a retail establishment found in violation of any provision of this ordinance is subject to the following penalties:
 - (1) A formal warning for the first offense;
 - (2) A civil fine of \$100.00 for the second offense;
 - (3) A civil fine of \$250.00 for third offense and subsequent offenses.
- (b) Each calendar day during which the civil violation occurs shall constitute a separate and distinct offense.
- (c) Any county employee authorized to enforce codes and ordinances shall be empowered to enforce this article, unless otherwise directed by the board of county commissioners.
- (d) Any person who is found in violation of this article may request a hearing be scheduled by a county hearing officer. The request shall be made in writing to the county business license clerk within 15 business days of the formal violation. The hearing shall be held within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The county hearing officer shall determine whether a violation of this article occurred. A hearing officer shall mail a written notice of decision to the owner within five working days of the hearing. If the hearing officer determines a violation of this article did occur, the hearing officer shall impose the fine as prescribed. If the hearing officer determines a violation did not occur, the imposition of a fine will be removed and no fine will be imposed.
- (e) Failure to pay a fine imposed by this article may prevent the issuance of a business license or business license renewal. ~~(Bernalillo Planning Ordinance Article X.- Single-Use Plastic Bags and Polystyrene Containers.)~~
- (f) Code enforcement will track the number of formal written notices and fines issues on behalf of this ordinance each year
- (g) This article is effective: (Date/Tiered roll out)
(Bernalillo Planning Ordinance Article X.-Single-Use Plastic Bags and Polystyrene Containers.)

Sec. (X-X). –Public education.

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No less than 60 days prior to the effective date of the ordinance from which this article is derived, the Board of County Commissioners and Sustainability Division shall initiate a public education campaign in both English and Spanish about the new regulations, and supporting facts for this ordinance, encouraging the use of reusable or sustainable options and the recycling of single-use items.

The Sustainability Division with Support from the Single-Use Plastics and Polystyrene Working Group shall make a presentation to the Board of County Commissioners with recommendations on how to curb the issues with the ordinance identified by the public and the retail establishments, no later than one year after the adoption of this ordinance.

After (insert date) the adoption of the ordinance, the Santa Fe County Sustainability Division with support from the County Managers office, and Code Enforcement shall design and post on the Santa Fe County website, educational materials to be downloaded for display in retail sales establishments. Educational materials shall include the following elements, including but not limited to –

- i. An announcement of the effective date of this ordinance;
 - ii. A reminder to bring reusable bags; and
 - iii. A reminder of the mandatory recycled paper bag fee of 10 cents or more.
- b. After (insert date), the adoption of the ordinance Santa Fe County Sustainability Division and Code Enforcement shall issue a news release including:
- i. An announcement of the effective date of this ordinance;
 - ii. A reminder to bring reusable bags; and
 - iii. A reminder of the mandatory recycled paper bag fee of 10 cents or more.
- c. Growth Management Code Enforcement, supported by Sustainability Divisionshall provide a written notice to each affected establishment at least 90 days prior to the effective date of this ordinance.
- d. The Board of County Commissioners may promulgate rules, regulations and outreach strategies for the Public Information campaign for the success of the respective ordinance.
- e. A retail sales establishment affected by regulations pursuant to this ordinance shall clearly and visibly display at the store entrance and at each check-out counter or register signage developed by the Sustainability Division, as described in this ordinance.
- f. To further promote the use of reusable bags and reduce the quantity of single-use carry out bags entering the County’s waste system, retail establishments are encouraged to make reusable bags for sale at checkout counters and provide boxes for use at checkout counters free of charge.

(Bernalillo Planning Ordinance Article X.-Single-Use Plastic Bags and Polystyrene Containers—with minor edits.)

Sec. (X-X). –Severability clause.

If any section, paragraph, sentence, clause, word or phrase of this article is for any reason held to be invalid or unenforceable by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article. The commission hereby declares that it would have passed this article and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid. (Bernalillo Planning Ordinance Article X.-Single-Use Plastic Bags and Polystyrene Containers)

Sec. (X-X). _Effective Date

This " Single- Use Product Ordinance" shall become effective on (date). To facilitate the transition to reusable bags, there shall be (tiered or...?) a ninety (90) day implementation period from the effective date of this Ordinance for the ban on single-use plastic bags, expanded polystyrene cups, plates, bowls and food serving or storage boxes and a one hundred - eighty (180) day implementation period from the effective date of this ordinance for plastic straws and stirrers.

Reference Bernalillo Ordinance Link:

https://library.municode.com/nm/bernalillo_county/codes/code_of_ordinances?nodeId=BECOC O_CH30EN_ARTXSIEPLBAPOCO