**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; PROVIDING EXEMPTIONS; ESTABLISHING ENFORCEMENT AND PENALITIES 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 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 and single-use polystyrene containers create significant environmental impacts including the contamination of the environment, ingestion and entanglement by wildlife, and widespread litter. Single-use polystyrene containers create non-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.)

**Sec. (X-X). --Applicability** (Business types & categories of businesses)

1. A retail establishment shall not provide at point of sale a single-use plastic carryout bag or single-use polystyrene container including cups or food containers to any customer.
2. A retail establishment shall provide only the following carryout item types at checkout to customers: reusable bags, reusable containers, recyclable paper bags, recyclable containers, and/or cardboard boxes.
3. The retail establishment shall post at the point of sale or on each bag a notice that the bags and containers issued pursuant to this article are recyclable and/or compostable and encouraging recycling of the bags and containers.
4. Nothing in this section shall be read to preclude retail establishments from making reusable bags and containers available for sale to customers.
5. All county retail establishments are encouraged, but not required, to post notices encouraging customers to bring their own reusable shopping bags.

This article shall not be construed to apply to plastic wrappings, bags or containers distributed by the manufacturer for packaging or preparing goods for display prior to sale. (Bernalillo Planning Ordinance Article X.-Single-Use Plastic Bags and Polystyrene Containers.)

**Sec. (X-X). --Definitions**

**Retail establishment-**is any retail business including, but not limited to, a convenience store, restaurant, grocerystore, pharmacy, home improvement stores, liquor stores, gas stations, seasonal or temporary business, farmers market or farm stand, 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.

**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 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 food boxes manufactured for single items, such as hamburgers, as well as larger take-out containers and take-home food cartons. (Taos Ordinance 20-05)

**Plastic drinking straw**-**or stirrer-**single-use, plastic disposable straw for liquid consumption or swizzle stick, coffee, tea, or beverage stirrer made of plastic of any size or color, manufactured and for the purpose of a single use by a user.

**Plastic stirrer**-see above.

**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 plastics and designed as a single-use product.

**Intentional outdoor balloon releases**-plastic, latex, or mylar balloon inflated with any type of lighter than air gas (including, and not limited to helium gas).

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

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

(sourced from spreadsheet)

**Sec. (X-X). --Exemptions**

**Single-use plastic bag-**(1)non-handled bags used to protect items from damaging or contaminating other purchased items placed in a recycled content paper bag, reusable carryout bags or recyclable cardboard boxes; (2) 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 food provider’s premises; (3) laundry, dry cleaning or garment bags, including bags provided by hotels to guests to contain wet or dirty clothing; (4) bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste; (5) bags used to contain or transport live animals or aquatic plants; (6) bags used to transport chemical pesticides, drain-cleaning chemicals or other caustic chemicals sold at the retail level; (7) bags provided to transport partially consumed bottles of wine; (8) bags used to protect delivered newspapers from inclement weather; or (9) any bag similar to those exempted by this subsection, as determined by the department of environment. (sourced from spreadsheet)

**Expanded polystyrene plate, cup, or food container-**shall not include: food or beverages that have been packaged in expanded polystyrene outside the point of sale’s control. (sourced from spreadsheet)

**Plastic drinking straw**-**or stirrer-**nursing homes and hospitals/all other request only policy

**Plastic splash guards-**

**Intentional outdoor balloon releases-**(1)balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes. (2) Hot air balloons that are recovered after launching. (3) A balloon that is released and remains indoors. (4) does not apply to weather balloons that are used for the purpose of carrying scientific instruments during the performance of an experiment or testing procedure.

**Plastic utensils-**request if needed.

**Condiment packets-**request if needed.

(Sourced from spreadsheet)

**Sec. (X-X). --Prohibitions of each item**

**Single-use plastic bag**-Retail sales establishments, food providers and entities that deliver goods are prohibited from making available or delivering goods in a single-use plastic checkout 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 no less than $.10 fee for the recycled-content paper bags. $.01 stays with the store and $.09 goes to the County to fund sustainable materials management education efforts. (Or a $.05 to $.05 split?) (Sourced from spreadsheet)

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.

**Expanded polystyrene plate, cup or food container**-A retail establishment shall not provide or sell to any customer, singularly or in bulk, any single-use plastic carryout bag, plastic straw or stirrer, or expanded polystyrene foam cup, plate, or food container (Taos Ordinance 20-05)

**Plastic drinking straws or stirrers**-a food service establishment shall not provide a single-use plastic straw or stirrer to a customer, except that a food service establishment may provide a straw or stirrer to a customer upon request. (Sourced from spreadsheet)

**Plastic splash-guards**- The term “single-use plastic splash guard” means a device that fits into the sip-hole of a beverage container lid to prevent a beverage from splashing and is designed as a single-use product made of plastic

**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 organize the release of or intentionally cause to be released into the atmosphere within a twenty-four hour period ten (Why ten? Why not prohibit all?) or more helium or other lighter-than-air gas balloons.

**Plastic utensils**-Restaurants and third-party food delivery services will not provide utensils, condiment packets, napkins, or extra food containers with take-out or delivery orders unless requested by the customer. Third-party delivery services must give customers the option to request these items, but the default option will be to not include them. Food service establishments with self-service stations in-house are allowed to offer these items.

**Condiments packets**-See above

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

**If Code Enforcement 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.**

1. Any owner of a retail establishment found in violation of any provision of this ordinance is subject to the following penalties:
2. A formal warning for the first offense;
3. A civil fine of $100.00 for the second offense;
4. A civil fine of $250.00 for third offense and subsequent offenses.
5. Each calendar day during which the civil violation occurs shall constitute a separate and distinct offense.
6. 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.
7. 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.
8. 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.)
9. 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.**

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=BECOCO_CH30EN_ARTXSIEPLBAPOCO>