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ORDINANCE NO. 17-19

**AN ORDINANCE AMENDING SECTIONS 38-111, 38-112,
AND 38-113, CITY CODE; PROVIDING FOR THE
PROHIBITION OF THE SALE OR USE OF POLYSTYRENE
AND POLYPROPYLENE FOOD SERVICE ARTICLES AND
PLASTIC STRAWS BY CITY CONTRACTORS AND
TEMPORARY VENDORS ON CITY PROPERTY;
PROVIDING FOR CODIFICATION; PROVIDING FOR
SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

11 **WHEREAS**, the City of New Smyrna Beach is committed to
12 environmental protection and stewardship and hereby finds and
13 declares that it is in the interest of the public, health, safety,
14 and welfare to reduce litter and pollutants on the land and the
15 waters of the City; and

16 **WHEREAS**, discarded single-use plastic straws pose health and
17 environmental risks to wildlife and marine life and litter streets,
18 parks and public spaces; and

19 **WHEREAS**, polystyrene products are not readily recyclable,
20 non-biodegradable, and take several decades to hundreds of years
21 to deteriorate in the environment or in a landfill; and

22 **WHEREAS**, the reasonable control of the distribution of
23 expanded polystyrene products (sometimes called Styrofoam, a Dow
24 Chemical Co. trademarked form of polystyrene foam insulation) as
25 well as other single-use plastics, including polypropylene, in
26 response to the growing issue of these items ending up in
27 overburdened landfills, waterways, and the ocean is required to
28 protect the public health, safety, and welfare; and

29 **WHEREAS**, the City finds that there are reasonable
30 "environmentally-friendly" alternatives to polystyrene and,
31 polypropylene, and plastic straws, including but not limited to
32 all natural paper, plant, vegetable, and other natural products;
33 and

34 WHEREAS, it is the intent and purpose of this Ordinance to
35 provide and maintain for the citizens and visitors of the City
36 healthy and aesthetically-pleasing experiences, while
37 simultaneously advancing the City's sustainability goals by
38 reducing the introduction of these non-biodegradable and
39 environmentally deleterious products into surrounding ecosystems
40 and landfills; and

41 WHEREAS, the provisions of this Ordinance are not intended
42 and shall not be construed as superseding or conflicting with any
43 statutory provisions relating to or rules and regulations
44 promulgated by the State of Florida but shall be construed as
45 implementing and assisting the permissible regulations under the
46 City's home rule powers and the enforcement thereof.

47

48 ***NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE***
49 ***CITY OF NEW SMYRNA BEACH:***

50 **SECTION 1:** That New Smyrna Beach Code of Ordinances, Chapter 38,
51 Article IV. Single-Use Plastics, Sections 38-111, 38-112, and 38-
52 113 are hereby amended as follows: (Note: Omissions from text are
53 indicated by [...], deletions from text are indicated by ~~strikeout~~,
54 and additions to text are indicated by underline.)

55

56 CHAPTER 38 - ENVIRONMENT

57

58 ARTICLE IV. ~~RESERVED~~ SINGLE-USE PLASTICS

59

60 Sec. 38-111. ~~Reserved~~Definitions.

61

62 Plastic Straws means any tube for transferring a beverage from its container to the mouth of the
63 drinker made from non-renewable materials.

64

65 City Contractor means any person or entity, including food service establishments regulated by
66 chapter 500, Florida Statutes, which has entered into a contract with the City to provide goods or
67 services or services to the City.

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69 City Facility includes, but is not limited to, any building, structure, park, or beach owned, operated
70 or managed by the City.

71 City Property includes, but is not limited to, any land, water, or air rights owned, operated or
72 managed by the City.

73

74 Expanded polystyrene means blown polystyrene and expanded and extruded foams that are
75 thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number
76 of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam),
77 injection molding, foam molding and extrusion-blown molding (extruded foam polystyrene).

78

79 Food service articles means straws, plates, bowls, cups, containers, lids, trays, and all similar single
80 use items used for serving or distributing food or drink.

81

82 Polypropylene means a plastic polymer of propylene (C3H5), commonly identified by ASTM
83 Resin Identification Code #5.

84

85 Polystyrene means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene
86 or para-methylstyrene by weight.

87

88 Temporary Vendor means any person or entity issued temporary authorization from the City to
89 provide or sell food on City Property or in a City Facility, special event permits issued by the City
90 for a special event on City Property or in a City Facility.

91

92 **Sec. 38-112. Reserved Prohibition.**

93

94 (1) The use of polystyrene or polypropylene food service articles and plastic straws by City
95 Contractors and Polystyrene or Polypropylene Food Service Articles or Plastic Straws in
96 City Facilities or on City Property, including but not limited to special events on City
97 Property or in a City Facility is prohibited.

98

99 (2) The provisions of this section shall be incorporated into all contracts, leases, or concession
100 agreements for City Contractors and Temporary Vendors entered into after the effective
101 date of this Ordinance.

102

103 (3) A violation of this section shall be deemed a material default under the terms of this
104 contract, lease or, concession agreement or temporary authorization from the City, and is
105 grounds for termination or revocation of a special event permit, contract, lease, concession
106 agreement or temporary authorization from the City.

107

108 **Sec. 38-113. Reserved Exceptions.**

109

- 110 (1) This Division shall not apply to prepackaged foods that have been filled and sealed prior
111 to receipt by the City Contractor or Temporary Vendor, including products used for the
112 storage of raw meat, pork, poultry, fish, and seafood.
113
- 114 (2) Any City contract, lease, or concession agreement entered into prior to the effective date
115 of this section or any temporary permit issued prior to the effective date of this section shall
116 not be subject to the requirements of this section, unless the City Contractor or Temporary
117 Vendor voluntarily agrees thereto.
118
- 119 (3) To the extent any individual with a qualified disability under the Americans with
120 Disabilities Act may require polystyrene or polypropylene food service articles or plastic
121 straws, such articles may be provided upon request.
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123

124 **SECTION 2. Codification.** This Ordinance shall be codified as a part
125 of the Code of Ordinances of The City of New Smyrna Beach, Florida,
126 such provisions may be renumbered or re-lettered to accomplish
127 such intention, and the word "ordinance" or similar words may be
128 changed to "Section", "Article", or other appropriate word. The
129 City Clerk is granted liberal authority to codify the provisions
130 of this Ordinance as contemplated herein.
131

132
133 **SECTION 3: Public Hearing.** That a public hearing considering the
134 adoption of this ordinance was held April 23, 2019, in the City
135 Commission Chambers at City Hall, 210 Sams Avenue (south entrance
136 on Julia Street), New Smyrna Beach, Florida, after notice is found
137 to comply with §166.041(3)(c), F.S.
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139
140 **SECTION 4: Conflicting Ordinances.** That all ordinances or parts
141 thereof that are in conflict with this ordinance shall be and the
142 same are hereby rescinded and repealed.
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144 **SECTION 5: Severability.** That if any section, sentence, clause or
145 phrase of this ordinance is held invalid or unconstitutional by
146 any court of competent jurisdiction, then said holding shall in no
147 way affect the validity of the remaining portions of this
148 ordinance.

149 **SECTION 6: Effective Date.** That this ordinance shall take effect
150 60 days after final adoption.

151

152 **APPROVED AS TO FORM AND CORRECTNESS:**

153

154 *Carrie Avallone*
155 **CARRIE AVALLONE**

156 **City Attorney**

157

158

159 **DATE:** 4/2/2019

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