1st Reading 7-10-19
#1

SPONSORED BY: JPD
SECONDED BY: MD

CITY OF HOBOKEN
ORDINANCE NO.:

AN ORDINANCE TO AMEND HOBOKEN CITY CODE § 148 ENTITLED "PLASTIC BAGS" TO REGULATE THE USE BY RETAIL ESTABLISHMENTS OF REUSABLE PLASTIC CARRY-OUT BAGS AND POLYSTYRENE

WHEREAS, on June 20, 2018, the City Council authorized ordinance B-48 to regulate the use of single-use plastic carry-out bags and recyclable paper bags and to promote the use of reusable bags in the City of Hoboken ("the Ordinance"); and

WHEREAS, the Ordinance went into effect on January 22, 2019 and was received positively by a majority of Hoboken residents; and

WHEREAS, the Ordinance defines a reusable bag as a bag made of cloth or other washable fabric with handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

(1) It has a minimum lifetime of 125 uses;

(2) It can carry a minimum of 22 pounds;

(3) It is machine-washable or is made from a material that can be cleaned or disinfected;

(4) It does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations; and

(5) If made of plastic, it is a minimum of at least 2.25 mils thick; and

WHEREAS, therefore, reusable plastic bags of at least 2.25 mils thick with a minimum lifetime of 125 uses that can carry a minimum of 22 pounds are permissible under the Ordinance; and

WHEREAS, several large retailers in Hoboken are providing such reusable plastic bags as the prevailing alternative at the point of purchase; and

WHEREAS, if such reusable plastic bags are not actually being reused multiple times by customers, then allowing for the provision of such bags would detract from the principle purpose of the Ordinance, i.e., to reduce the consumption of plastic bags; and

WHEREAS, the City of Hoboken desires to reduce the use of plastic bags by all residents and merchants; and

WHEREAS, Hoboken residents have expressed an interest in expanding the Ordinance to prohibit all carry-out plastic bags; and

WHEREAS, in addition to single-use plastic bags, expanded polystyrene ("EPS") foam food service articles and loose-fill packaging such as "packing peanuts" also present significant global environmental issues; and

WHEREAS, EPS is a plastic resin manufactured into consumer products such as "foam" cups, containers, trays, plates, clamshell cases, and egg cartons; and

WHEREAS, EPS foam is non-biodegradable and non-recyclable, as there currently is no recycling market for post-consumer EPS collected in a curbside metal, glass, and plastic recycling collection program; and

WHEREAS, removing EPS foam from the waste stream will help the City continue to move towards its goal of sending zero waste to landfills; and

WHEREAS, there are several alternative materials that can be used as opposed to EPS that are able to be recycled, including aluminum, uncoated paper, glass, and compostable items; and

WHEREAS, EPS is a source of neighborhood litter, can clog storm drains, and can

pollute the Hudson River and the NY-NJ Harbor Estuary, where it is hazardous to marine life; and

WHEREAS, the NY/NJ Baykeeper plastic collection report found that at least 165,840,512 million plastic particles are floating within NY-NJ Harbor Estuary waters at any given time, and the most abundant types of plastic within the samples was EPS foam (38%); and

WHEREAS, EPS is already banned in cities across the country, including New York City, Washington, DC, Minneapolis, San Francisco, Oakland, Portland, Albany, and Seattle; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, a municipality in New Jersey may enact such ordinances "as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants", and regulating the use of plastic bags and EPS will preserve the public health, safety, and welfare of the municipality.

NOW, THEREFORE, the City Council of the City of Hoboken does hereby Ordain as follows:

SECTION ONE: The Hoboken City Code, Chapter 148, entitled "Plastic Bags", shall be amended to include the new title, Chapter 148 "Plastic Bags and Polystyrene."

The following changes shall be made to the Hoboken City Code, Chapter 148, entitled "Plastic Bags and Polystyrene" (note that the order of section 148-1, definitions, has been formatted in alphabetical order):

§ 148-1 DEFINITIONS

The following definitions apply to this Ordinance:

(1) The term "compliant bag" means recyclable paper carry-out bags and reusable bags.

(a) A recyclable paper carry-out bag is a paper bag that meet all of the following minimum requirements:

(1) it is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material;

(2) it can be composted; and

(3) it displays the words "recyclable" and/or "reusable" in a highly visible manner on the outside of the bag.

(b) A reusable bag is a bag made of cloth or other non-plastic washable material ~~fabric~~ with handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

(1) it has a minimum lifetime of 125 uses;

(2) it can carry a minimum of 22 pounds;

(3) it is machine-washable or is made from a material that can be cleaned or disinfected; and,

(4) it does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations.~~; and~~

~~(5) If made of plastic, it is a minimum of at least 2.25 mils thick.~~

(2) The term "customer" means any person purchasing goods or services from a retail establishment.

(3) The term "expanded polystyrene" ("EPS") means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Such term shall not include rigid polystyrene.

(4) The term "operator" means the person in control of, or having the responsibility for, the operation of a retail establishment, which may include~~, but is not limited to,~~ the owner of the retail establishment.

(5) The term "person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

(6) The term "polystyrene loose fill packaging", commonly known as packing peanuts, means a void-filling packaging product made of expanded polystyrene that is used as a packaging fill.

(7) The term "post-consumer recycled material" means a bag constructed of a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(8) The term "produce bag" or "product bag" means a very thin bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a retail establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

(9) The term "recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

(10) The term "retail establishment" means any store or commercial establishment that sells perishable or nonperishable goods including~~, but not limited to,~~ clothing, food whether such food is provided free of charge or sold and whether consumption occurs on or off the premises or is provided from a pushcart, stand, or vehicle, and personal items directly to the customer and is located within or doing business within the geographical limits of the City of Hoboken. Retail establishments include the following: a business establishment that generates a sales or use-tax; a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other commercial entity engaged in the retail sale of a limited line of goods that include milk, bread, soda, and snack foods; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises; and a business establishment that sells clothing, a hardware store, or any other non-perishable goods. "Retail establishment" does not include non-profit charitable reusers as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

(11) The term "single service articles" means cups, containers, lids, closures, trays, plates, knives, spoons, stoppers, paddles, place mats, napkins, doilies, wrapping materials, toothpicks, and all similar articles that are intended by the manufacturer to be used once for eating or drinking or that are generally recognized by the public as items to be discarded after one use. Straws are intentionally omitted from inclusion within this definition.

(12) The term "single use plastic carry-out bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant

sources, that is provided by an operator of a retail establishment to a customer at the point of sale. The term includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags. This definition specifically exempts the following from the category of "Single Use Plastic Carry-out Bag":

(a) bags provided by operators and used by consumers inside retail establishments to:

(1) package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;

(2) contain or wrap frozen foods, meat, or fish, whether packaged or not;

(3) contain or wrap flowers, potted plants, or other items where dampness may be an issue;

(4) contain unwrapped prepared foods or bakery goods, or

(5) pharmacy prescription bags.

(b) newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, yard waste bags, or pet waste bags.

§148-2 SINGLE USE PLASTIC CARRY-OUT BAGS PROHIBITED

No retail establishment shall provide to any customer a single use plastic carry-out bag, as defined in §148-1, above. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to product bags or to produce bags used to carry produce within the retail establishment to the point of sale. The prohibition applies to single use plastic carry-out bags used for take-out deliveries from retail establishments within the City of Hoboken. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

§148-3 COMPLIANT BAGS FOR A FEE

(1) All retail establishments shall make available to customers, for a fee, compliant bags, as defined herein, for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this Ordinance. The fee charged shall be reflected in the sales receipt.

(2) Nothing in this Ordinance prohibits customers from using bags of any type that they choose to bring to retail establishments themselves, in lieu of using bags available for a fee from the retail establishment, or from carrying away goods that are not placed in a bag.

§148-4 REGULATION OF RECYCLABLE PAPER CARRY-OUT BAGS

(1) All retail establishments shall make recyclable paper carry-out bags available to customers upon request for a fee of at least 10 cents but not more than 25 cents per bag if customers choose not to bring their own reusable bags.

(2) A retail establishment may provide customers with a reusable bag, as defined herein, for a fee of at least 10 cents.

§148-5 USE OF REUSABLE BAGS OR RECYCLABLE PAPER CARRY-OUT BAGS

(1) All retail establishments must provide customers with compliant bags, upon request, if customers fail to bring their own bags and request a bag, in accordance with the fee structure set forth in §148-4, above. A retail establishment may choose, in its discretion, to provide a credit to customers that choose to bring their own bags.

(2) Each retail establishment shall be strongly encouraged to educate its staff to promote the use of reusable bags and to post signs encouraging customers to use reusable bags rather than recyclable paper carry-out bags.

§148-6 REGULATION OF POLYSTYRENE

(1) No retail establishment or mobile food commissary shall possess, sell, or offer for use single service articles that consist of expanded polystyrene, including providing food in single service articles that consist of EPS. This subdivision shall not apply to:

   a. EPS containers used for pre-packaged food or products that have been filled and sealed outside of Hoboken prior to receipt by the retail establishment or mobile food commissary; and

   b. EPS containers used to store raw meat, pork, fish, seafood or poultry that is sold from a butcher case or similar retail appliance.

(2) No retail establishment shall sell or offer for sale polystyrene loose fill packaging in the City.

§148-67 EXEMPT CUSTOMERS

(1) All retail establishments must provide at the point of sale, free of charge, compliant bags, at the retail establishment operator's option, to any customer who participates in, or is a beneficiary of, any United States government federal welfare program, or any local or Hudson County welfare assistance program, or any New Jersey State welfare program, including but not limited to the New Jersey Supplemental Nutritional Assistance Program (SNAP) or the New Jersey State Supplemental Security Income Program (SSI).

(2) The Mayor or his/her designee may approve, with the concurrence of the City Council Environment Subcommittee, a request for an exemption from the requirements of this Ordinance by any operator of a retail establishment, with or without conditions. If the Subcommittee withholds or denies concurrence on an exemption, the Mayor may seek

concurrence from the City Council as a whole, but concurrence from the Subcommittee or the Council is required for the granting of an exemption.

(3) Exemption decisions are effective upon approval and are final, and they are not appealable, except otherwise provided for by law.

(4) The City of Hoboken establishes a fee for exemption requests of $100.

§148-~~7~~8 REMEDIES

(1) The City of Hoboken shall assist operators of retail establishments by referring them to appropriate municipal website(s) with information to retail associations, unions, and other organizations to create educational materials concerning the benefits of reusable bags rather than recyclable paper carry-out bags and to locate sources for the wholesale purchase of reusable bags. Any such information may include signage at retail establishment locations, informational literature, and employee training and shall take place before and after the operative date.

(2) All retail establishments shall be strongly encouraged to educate their staff in ways to promote reusable bags as the best environmental and economic option for carry-out bags and to post signs encouraging customers to use reusable bags.

§148-~~8~~9 ENFORCEMENT AND VIOLATION PENALTY

(1) The Director of the Department of Environmental Services, or his/her designee, has the responsibility for enforcement of this Ordinance and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including~~, but not limited to,~~ investigating violations and issuing fines.

(2) Any retail establishment that violates or fails to comply with any of the requirements of this Ordinance after an initial written warning notice has been issued for that violation shall be liable for an infraction.

(3) If a retail establishment has subsequent violations of this Ordinance after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and shall be payable by the operator of the retail establishment: (a) a fine not exceeding one hundred dollars ($100.00) for the first violation after the written warning notice is given; (b) a fine not exceeding two hundred dollars ($200.00) for the second violation after the written warning notice is given; or (c) a fine not exceeding five hundred dollars ($500.00) for the third and any subsequent violations after the written warning notice is given.

(4) A fine shall be imposed for each day a violation occurs or is allowed to continue.

(5) Any appeal of a written warning notice or fine shall be conducted pursuant with standard municipal regulations and procedures concerning appeals already adopted by the City of Hoboken.

SECTION TWO: NO CONFLICT WITH FEDERAL OR STATE LAW

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION THREE: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION FOUR: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FIVE: EFFECTIVE DATE

This Ordinance shall take effect six months after passage and publication as provided by law.

SECTION SIX: CODIFICATION

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

Meeting Date: July 10, 2019

Approved as to Legal Form:

Brian Aloia, Esq. Corporation Counsel

☐ Vetoed by the Mayor for the following reasons:

_____

_____

_____

_____

Adopted by the Hoboken City Council
By a Vote of Yeas to Nays
On the ___ day of _____, 2018

James Farina, City Clerk

-or-

☑ Approved by the Mayor
On the 16 day of August, 2018

Ravinder S. Bhalla, Mayor

✓ **Vote Record - CC - Ordinance**

☒ 1st Reading
☐ 2nd Reading
☐ Tabled
☐ Adopted
☐ Failed

		Yes/Aye	No/Nay	Abstain/Alternate	Absent
Peter Cunningham		☐	☐	☐	☐
Mike DeFusco		☐	☐	☐	☐
James Doyle		☐	☐	☐	☐
Vanessa Falco		☐	☐	☐	☐
Tiffanie Fisher		☐	☐	☐	☐
Emily Jabbour		☐	☐	☐	☐
Ruben Ramos		☐	☐	☐	☐
Michael Russo		☐	☐	☐	☐
Jennifer Giattino		☐	☐	☐	☐