

BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION

NOTICE is hereby given that **Ordinance 10-2024** - Ordinance of the Borough of Eatontown Entitled “**AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF EATONTOWN CREATING CHAPTER 242 ENTITLED “PLASTICS AND POLYSTYRENE FOAM” MAKING THE DISTRIBUTION OF PLASTIC UTENSILS, CONDIMENT PACKETS, NAPKINS, AND/OR EXTRA CONTAINERS WITH TAKE-OUT OR DELIVERY ORDERS BY REQUEST ONLY**” was passed after a public hearing at the regular meeting of **August 14, 2024** by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

ORDINANCE 10-2024

BOROUGH OF EATONTOWN

COUNTY OF MONMOUTH, STATE OF NEW JERSEY

AN ORDINANCE AMENDING THE CODE OF THE BOROUGH OF EATONTOWN CREATING CHAPTER 242 ENTITLED “PLASTICS AND POLYSTYRENE FOAM” MAKING THE DISTRIBUTION OF PLASTIC UTENSILS, CONDIMENT PACKETS, NAPKINS, AND/OR EXTRA CONTAINERS WITH TAKE-OUT OR DELIVERY ORDERS BY REQUEST ONLY

WHEREAS, the Borough of Eatontown’s Council, in cooperation with the Borough’s Environmental Commission and Green Team is committed to promoting, creating and supporting sustainability programs in the Borough; and

WHEREAS, the Borough of Eatontown has a cultural commitment to a thriving and healthy community within its boundaries; and

WHEREAS, the Borough is part of the Shrewsbury and Whale Pond Brook watersheds, and includes such waterways as the Parkers Creek Branch, Husky Brook, Wampum Brook, Cranberry Brook and Turtle Mill Brook, all of which eventually flow to the Atlantic Ocean; and

WHEREAS, it is estimated that 40 billion individual single-use plastic utensils are discarded every day in the United States; and

WHEREAS, the Borough recognizes that the providing of particular single-use plastics, including single-use plastic utensils, condiment packets, and napkins upon request will result in ecological, environmental, public health, and economic benefits for the Borough; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, the Borough seeks to prohibit the distribution of plastic utensils, condiment packets, napkins, and containers with take-out and delivery orders, unless requested by a customer; and

WHEREAS, the Borough recognizes that would be a successful method to reduce single-use plastics and save businesses money; and

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Eatontown, County of Monmouth, State of New Jersey, that the Borough Code is hereby amended to add a new Chapter 242 as follows:

§242-1-Purpose

The purpose of this article is to preserve public health, safety and welfare by reducing the environmental impact of single use plastics for which there does not exist a significant market to the Borough’s businesses or residents for recycling.

§242-2-Definitions.

Unless otherwise expressly stated, whenever used in this section, the following terms shall have the meanings set forth below:

ASTM STANDARD

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.

BOROUGH OF EATONTOWN CONTRACTOR

Any person or entity that has a contract with the Borough of Eatontown 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, or to be paid out of monies deposited in or under the control of the Borough.

BOROUGH OF EATONTOWN FACILITY

Any building, structure or vehicle owned and operated by the Borough of Eatontown, its agents, agencies, and departments.

BUSINESS ESTABLISHMENT

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 Red Bank, including those referenced in "food or grocery establishment" and "food provider."

COMPOSTABLE

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 composability, and any bioplastic 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.

CONDIMENT

Packaged ketchup, mustard, mayonnaise, hot sauce, salt, pepper, or any other herb, spice, seasoning, sauce, or substance that is used to give a special flavor to food.

COVERED FOOD SERVICE BUSINESS

A food service business that does not exclusively provide customers with eco-friendly alternative utensils and condiments, and which, therefore, is not exempt from the provisions of this ordinance

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, utensils, napkins, condiment packets, 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.

ECO-FRIENDLY ALTERNATIVE UTENSILS AND CONDIMENTS

Includes: utensils and condiment packets or packages which are composed of compostable material or another material approved, by the department or the United States Environmental Protection Agency, as an eco-friendly alternative to conventional plastics, regardless of whether such utensils and condiment packages are designed to be discarded, by the consumer, after a single use; utensils and condiment packets or packages which are designed to be used multiple times and are not intended to be discarded after a single use, regardless of whether such utensils and condiment packages are composed of conventional plastics; and any other utensils and condiment packets or packages that are approved, by the department or the United States Environmental Protection Agency, as eco-friendly alternatives to single- use plastic utensils or condiments.

EVENTS PROMOTER

An applicant for any event permit issued by the Borough or any Borough employee(s) responsible for any Borough-organized event.

FOOD OR GROCERY ESTABLISHMENT

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.

FOOD SERVICE BUSINESS

means and includes a restaurant, café, food truck, vendor station, cafeteria, or any other facility or premises, or section or part thereof, including, but not limited to, a section or part of a grocery store, convenience store, hospital, school, sports arena, entertainment venue, or other similar facility or venue, where meals are prepared and served to customers for immediate consumption thereby on or off the premises, whether on a take-out, eat-in, drive-thru, or delivery basis.

FOOD PROVIDER

Any vendor, business, organization, entity, group or individual, including food establishments, as defined herein, located in the Borough of Eatontown that offers food or beverage to the public.

PERSON

An individual, business, event promoter, trust, firm, joint stock company, Corporation, non-profit, including a government corporation, partnership, or association.

PLASTIC

Any item made predominantly of processed materials, whether derived from petroleum or a biologically- based source, that are mostly thermoplastic or thermosetting polymers, but does not include compliant carry-out bags as defined in this Article.

POINT OF SALE

The location where a retail establishment relinquishes legal possession of purchased goods to a customer, regardless of where or how payment for such goods are made.

PREPARED FOOD

Food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the Borough. Prepared food does not include raw, butchered meats, fish and/ or poultry sold from a butcher case or similar food establishment.

RECYCLABLE

Any material that is accepted by the Borough recycling program or the Monmouth 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's recycling centers.

RETAIL ESTABLISHMENT

Any store or commercial establishment that sells products, perishable or otherwise, directly to customers. Retail establishments include, but are not limited to, drug stores, pharmacies, supermarkets, grocery stores, convenience stores, restaurants, fast food establishments, clothing stores and hardware stores.

SINGLE-USE UTENSILS OR CONDIMENTS

Utensils or condiment packets or packages which are composed of conventional plastics and are designed to be discarded, by the consumer, after a single use.

UTENSIL

An instrument, including, but not limited to, a knife, fork, or spoon, which is commonly used by humans to eat meals served thereto by a food service business.

§242-3 Plastic utensils, condiment packets, napkins, and containers prohibited; conditions.

- A. The provision of plastic utensils, condiment packets, napkins, and extra containers to take-out or delivery customers is prohibited, unless requested by the customer. Online ordering and delivery apps shall be set to a default to not provide plastic utensils, condiment packets, napkins, and/or extra containers unless the customer selects an option to request said items. Delivery and courier services shall not provide said items unless requested by the customer

§242-4 Exemptions.

- A. Any product purchased, prepared or packaged outside the Borough of Eatontown and sold in or delivered into the Borough are exempt from the provisions of this chapter.
- B. These restrictions shall not apply to self-service stations within any food provider's premises or within any food or grocery establishment.

§242-5 Enforcement; violations and penalties.

- A. The Code Enforcement Officer shall have primary responsibility for enforcement of this section. The Code Enforcement Officer is authorized to take any and all other actions reasonable and necessary to enforce this section, including, but not limited to, investigating violations, issuing fines and entering the premises of any business establishment during business hours.
- B. If a Code Enforcement Officer determines that a violation of this section 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 provisions of this section after a written warning notice has been issued for that violation shall be subject to a civil penalty that shall not exceed \$250 for a first violation; \$500 for a second violation within any twelve-month period; and \$1,500 for each additional violation within any twelve-month period. Every 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.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Eatontown that any ordinances or portions thereof which are inconsistent, in whole or in part, with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Eatontown that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Eatontown that this Ordinance shall take effect on January 1, 2025.