BERNALILLO COUNTY

BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2019-15

WHEREAS, the U.S. each year generates more than 4 million tons of plastic bags, sacks and wraps, according to the Environmental Protection Agency, and only about 13 percent of that plastic is recycled;

WHEREAS, single-use plastic bags eventually make their way to landfills and into our oceans, adding to the 8 million metric tons of plastic entering the ocean every year;

WHEREAS, the majority of single-use plastic bags and polystyrene containers do not biodegrade but rather persist in the environment for hundreds of years, even though they are only used for a few minutes; and

WHEREAS, thousands of single-use plastic bags and polystyrene containers contribute to public litter;

WHEREAS, the production of polystyrene creates greenhouse gases and polystyrene products take more than 500 years to degrade, even though they are only used for a few minutes;

WHEREAS, single-use plastic bags, when mistakenly placed in recycling bins, often jam recycling equipment resulting in work stoppages and loss of efficiency at recycling facilities;

WHEREAS, major American companies have announced plans to end the use of polystyrene cups and containers; and,

WHEREAS, at least 350 local governments in the United States have banned the use of single-use plastic bags and major retailers have announced plans to end the use of single-use plastic bags in all stores by 2025.

Section 1. 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 Ordinance 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.

Section 2. Applicability

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A. A retail establishment shall not provide at the point of sale a single-use plastic carryout bag or single-use polystyrene container to any customer.
B. 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.
    a. 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 Ordinance are recyclable and/or compostable and encouraging recycling of the bags and containers.
    b. Nothing in this section shall be read to preclude retail establishments from making reusable bags and containers available for sale to customers.
C. All County retail establishments are encouraged, but not required, to post notices encouraging customers to bring their own reusable shopping bags.
D. This Ordinance 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.

Section 3. Definitions

A. "Single-use plastic carryout bag" is defined as a plastic bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single-use carryout bags do not include bags without handles provided to the customer (1) to transport produce, bulk food, candy, or meat from a product, bulk food, or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag; and (4) to transport clothing items from a dry cleaning establishment.
B. "Retail establishment" means 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, and seller of merchandise and dry goods to the consumer. For purposes of this Ordinance, food banks and dry cleaners are not defined as retail establishments.
C. "Single-use polystyrene container," for purposes of this Ordinance, is defined as a disposable food service container designed for one time use and made from polystyrene foam. A disposable food service container includes service ware for take-out foods, packaged meat, eggs, bakery products, and leftovers from partially consumed meals prepared by food vendors. Polystyrene foam is blown polystyrene and expanded or extruded foams using a styrene monomer.
D. "Reusable bag" is defined as a bag with handles that is specifically designed and manufactured for multiple reuse and is made of durable material suitable for reuse.

Section 4. Authorizing a bag fee

A. Retail establishments may charge a fee of up to 5-cents ($.05) per approved bag or container issued to customers pursuant to this Ordinance.

Section 5. Enforcement

A. Any owner of a retail establishment found in violation of any provision of this ordinance is subject to the following penalties
    a. A formal warning for the first offense;
    b. A civil fine of $100 for the second offense;
    c. A civil fine of $250 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 ordinance, unless otherwise directed by the Board of County Commissioners.
D. Any person who is found in violation of this Ordinance may request a hearing be scheduled by a county hearing officer. The request shall be made in writing to the Bernalillo 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 Ordinance occurred. The hearing officer shall mail a written notice of decision to the owner within five (5) working days of the hearing. If the hearing officer determines a violation of this Ordinance 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.

Section 6. Requiring an impact study within 2 years

A. During the second-half of FY 2022, a temporary administrative committee shall convene to evaluate the impact of this ordinance and present a report to the Board of County Commissioners before June 30, 2022.
B. The Committee shall include:
    a. The County Attorney, or his/her designee;
    b. The Solid Waste Program Manager, or his/her designee;
    c. The Public Works Division Deputy County Manager, or his/her designee;
    d. The Chair of the Board of County Commissioners, or his/her designee;
    e. The County Manager, or his/her designee; and,
    f. A member of the business community, appointed by the commission.
C. The report shall, at a minimum and as well as can be reasonably determined, determine the number of prohibited single-use plastic carryout bags and single-use polystyrene containers diverted from the public waste stream by this ordinance, the number of bags and containers sold or distributed at the point of sale, and the percentage of customers using reusable bags on a regular basis. The committee shall also make recommendations for changes to this act.

Section 7. Public Education

Section 8. Severability Clause.

If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Commission hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 9. Compilation.

The Ordinance amendment prescribed by Sections 1 through 8 shall amend, be incorporated in, and made part of the Bernalillo County Code.

Section 10. Effective Date.

This Ordinance shall take effect after publication by title and general summary on January 1, 2020.

Any business which will be impacted by this Ordinance, and which has already ordered and received items prohibited by this Ordinance by the date of enactment, may use those items in its normal course of business. No items prohibited by this Ordinance may be purchased, obtained, or used after the effective date stated in this Section.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY, NEW MEXICO this 25th day of June, 2019.

APPROVED AS TO FORM

W. Ken Martinez, County Attorney

BERNALILLO COUNTY COUNTY CLERK SEAL STATE OF NEW MEXICO

ATTEST:

Linda Stover, County Clerk

BOARD OF COUNTY COMMISSIONERS

Maggie Hart Stebbins, Chair

Debbie O'Malley, Vice Chair

EXCUSED

Steven Michael Quezada, Member

Lonnie C. Talbert, Member

Charlene E. Pyskoty, Member