

The Move Away From Plastics: A Local Ordinance To Reduce Single-Use Plastics

WHEREAS, plastic pollution starts with fossil fuel extraction and arms individuals, communities, and ecosystems all along the supply chain. As plastic products degrade, they emit greenhouse gases; and

WHEREAS, oil refineries, plastic manufacturers and incinerators are disproportionately located in low-wealth and low-income communities, which bear the brunt of the associated health impacts; and

WHEREAS, recycling alone is insufficient to meet these threats as plastic production is expected to increase 40 percent during the next decade, with plastic production accounting for 20 percent of global fossil fuel consumption, and the majority of plastics created cannot be recycled in standard curbside recycling programs; and

WHEREAS, single-use plastic bags degrade the environment, blocking storm drains, becoming entangled in treetops, and fouling public areas; and

WHEREAS, curbing the supply of single-use plastic will expand the lifespan of local landfills; and

WHEREAS, styrene, the main ingredient in polystyrene, has been declared as a probable carcinogen by the NIH, National Research Council, the World Health Organization, and others; and

WHEREAS, plastic bags cause operational problems at recycling processing facilities, landfills, and transfer stations, and contribute to litter throughout the WNC region; and

WHEREAS, studies have shown the presence of microplastics in terrestrial and marine systems throughout the entire planet, including human food systems and human bodies, and have been detected in troubling concentrations in the French Broad River; and

WHEREAS, numerous states and cities throughout the United States have banned single-use plastics resulting in dramatic decreases in plastics waste; and

WHEREAS, it is the duty of Buncombe County government to protect the natural environment, the economy and the health of its residents and visitors; and

WHEREAS, North Carolina's Solid Waste Management Act encourages "counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste," N.C. Gen. Stat. § 130A-309.03(b)(9), and requires "[e]ach unit of local government [to] establish and maintain a solid waste reduction program." *Id.* § 130A-309.06(a)(3); and

WHEREAS, counties of this State "may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace

and dignity of the county; and may define and abate nuisances. N.C. Gen. Stat. Ann. § 153A-121; and

WHEREAS, the North Carolina General Assembly has granted counties of this State “adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power. N.C. Gen. Stat. Ann. § 153A-4; and

WHEREAS, the North Carolina Constitution guarantees the people of the State the right to enjoy a clean and healthy environment. N.C. Const. art. XIV § 5.

NOW, THEREFORE, BE IT RESOLVED BY THE BUNCOMBE COUNTY COMMISSION THAT:

Section 1. Purpose

The purpose of this Ordinance is to reduce plastic waste and protect Buncombe County’s drinking water, natural beauty, and ecological integrity, thereby maintaining and improving public health and welfare.

In addition to the legal requirements set forth herein, businesses are strongly encouraged to take additional action to reduce the proliferation of single-use plastics in our environment, including:

- a. Adopting an “upon request only” policy with regard to straws, plastic utensils, and other single-use items;
- b. Providing discounts or other incentives to customers who supply their own containers or serviceware rather than using single-use items;
- c. Where single-use items are necessary, using more sustainable, plant-based materials; and
- d. Ensuring that any compostable plastic items supplied by the business are disposed of in an adequate composting facility.

Section 2. Definitions

As used in this Ordinance, the below terms have the following meanings, unless context clearly indicates otherwise:

- a. “Covered business” means a business entity operating within the County that
 1. Serves, vends, or otherwise provides food and/or beverages for human consumption, at a point of sale, or
 2. Sells or distributes retail goods from the business to retail customers. This definition does not exclude businesses that provide goods to customers via on-demand delivery services.

Examples of covered businesses: The category of covered businesses expressly includes, but is not limited to, grocery stores, supermarkets, gas stations, convenience

stores, restaurants, food trucks, temporary or pop-up vendors, clothing stores and event spaces. The category of covered businesses includes the government of Buncombe County whenever it participates in the activities described in subsections (a) and (b) above.

Exempted entities: The category of covered businesses expressly exempts healthcare providers, such as hospitals, dentists, and assisted living facilities; as well as food banks and pantries and businesses that deliver goods to customers only by mail.

- b. “County” means Buncombe County and any subdivision thereof or public official assigned to enforce or administer this Ordinance;
- c. “Recycled paper bag” means a paper bag that (i) contains a minimum of 40 percent post-consumer recycled content; and (ii) is 100 percent recyclable;
- d. “Reusable bag” means a bag with handles that is (i) specifically designed and manufactured to withstand regular reuse; (ii) is machine- or hand-washable; and (iii) is not a “single-use plastic bag” as defined in Section 1 e.
- e. “Single-use plastic bag” means a disposable plastic bag (i.e., not a reusable bag as defined by this Ordinance) provided by a covered business to customers at a point of sale to hold purchases made at the covered business. This includes all bags created through a “blown film extrusion” process.

Exemptions: A single-use plastic bag is not any of the following: (i) a bag provided within a covered business prior to purchase, somewhere other than at the point of sale, to protect loose items from damage or contamination, such as a plastic produce bag; (ii) a non-handled plastic bag designed to be placed over articles of clothing on a hanger to keep those clothing items from becoming damaged or contaminated; (iii) bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic substances sold at retail; (iv) bags used to contain or transport live animals, such as fish or insects sold in pet stores.

- a. “Expanded polystyrene,” or EPS, is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). EPS is commonly called by the trade name “Styrofoam.”
- b. “Food Service Product” is a disposable product used to contain a food or beverage item, including but not limited to food containers, clamshell containers, plates, bowls, trays, and cups.
- c. “Recyclable” means a material that would otherwise be disposed of or processed as waste that can be recovered, separated, collected, and reprocessed for the purpose of using the reprocessed material in the manufacture of a new product. A recyclable item is

processable by facilities charged with accepting curbside recycling from Buncombe County's businesses.

Section 3. Prohibition on Plastic Single-Use Bags

- a. After this Ordinance's effective date, no covered business shall provide single-use plastic bags, as defined by this Ordinance, to customers at points of sale. Except as allowed by Section 4, covered businesses shall not otherwise make single-use bags available to customers.
- b. *Exception:* For a maximum of XX days after the effective date of this Ordinance, covered businesses may continue to provide to customers only those single-use plastic bags for the sole purpose of depleting back stocks of single-use plastic bags purchased at least 30 days prior to the Ordinance's effective date.

Section 4. Recycled Paper Bags and Bag Fees

- a. After this Ordinance's effective date, covered businesses may make available recycled paper bags at points of sale for a fee of no less than \$.10 (10 cents) per bag. Covered businesses are encouraged to make reusable bags available for purchase at the point of sale.
- b. A covered business otherwise required to collect a paper bag fee by this section shall not collect a fee from customers making purchases with an electronic benefits transfer (EBT) card or a payment card or voucher issued by the Supplemental Nutrition Assistance Program (SNAP) or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
- c. Fees collected pursuant to this section may be retained by the covered business.

Section 5: Prohibitions on Expanded Polystyrene Food Service Products

- a. After this Ordinance's effective date, no covered business operating in Buncombe County may provide customers with any expanded polystyrene food service products.
- b. No expanded polystyrene food service products shall be used in any County government facility or at any County government sponsored event.
- c. No parties contracting with the County shall use expanded polystyrene food service products in County government facilities or in connection with their contractual duties to the County.

Section 6: Implementation

- a. The effective date of this Ordinance's provisions is [TIME] after its adoption by the County Commission.

- b. The County may promulgate rules and regulations to implement Sections 3 through 5 of this Ordinance.
- c. The County shall provide a website and/or a phone number for residents to report potential violations of this ordinance.

Section 7. Civil penalty

- a. *Notice required before penalty.* No penalty shall be assessed pursuant to this chapter until the covered business alleged to be in violation has been notified of the violation in accordance with this section.
 - 1. *Notice of violation.* Whenever any County official charged with the duty of enforcing the regulations in this chapter has reasonable cause to believe that a covered business is violating any of the provisions of this chapter or that real property within the County is in violation of this chapter, that official shall notify the alleged violator and/or property owner of the violation, providing for up to 30 days to comply with the requirements of this chapter. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation exists.
 - 2. *Service requirements.* Notices of violation shall be in writing. The notice of violation shall specify the violation, what must be done to remedy the violation, an opportunity to cure the violation within a prescribed period of time and the consequences of non-compliance.
- b. *Extension of time to cure.* The County official charged with the duty of enforcing this chapter may upon written request from the alleged violator or the property owner, grant a single extension of time, not to exceed a period of 30 days in which the alleged violator may cure or correct the violation before the County issues a citation as set forth herein.
- c. *Citation for violation.* Any covered business that fails to comply with a notice of violation issued under this chapter within the time period set forth in the notice of violation or within any authorized extensions granted, shall be subject to a civil penalty in the amount of \$100.00 per day the violation continues with each day of violation constituting a separate and distinct violation. In no event shall the amount of the civil penalty arising out of the original notice of violation exceed \$5,000.00. The County shall serve a written citation on the alleged violator in accordance with the service requirements set forth above for a notice of violation. The citation shall specify the date the penalty commenced, that the penalty is in the amount of \$100.00 per day the penalty continues and shall continue to accrue at the rate of \$100.00 per day until either the violation is brought into compliance with the provisions of this chapter, or the penalty reaches \$5,000.00, whichever occurs first. To be deemed in compliance, the owner must give the County written notice of the corrective action taken. The citation shall state that the penalty shall be paid within 30 days of the date of the issuance of the citation and if not paid, that the matter will be referred to the County attorney to institute a civil action in the nature of a debt owed. If the civil penalty is not paid and/or if the violation is not cured within the time frames set forth in the citation and notice of violation respectively, the matter shall be referred to the County attorney for the institution of a civil action in

the name of the County in a court of competent jurisdiction to collect the amount owed and to otherwise obtain compliance with this chapter.

- d. *Equitable action.* In addition to or in lieu of other remedies as set forth herein, the County attorney may seek injunctive relief, an order of abatement or other appropriate relief in the appropriate court of law.
- e. *Refuse to remove.* The director shall not be obligated to cause the retrieval and removal of any required contents from any real property as set forth under this chapter, if after proper notice, the customer and tenant or property owner as applicable, fail and refuse to comply with the provisions of this chapter.