

**Legislative #
170386D**

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ORDINANCE NO: 170487

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2 **An ordinance of the City of Gainesville, Florida, amending the**
3 **Code of Ordinances to prohibit the use of expanded**
4 **polystyrene containers and single-use carry out plastic bags by**
5 **creating a new Division 4 within Article III of Chapter 27; by**
6 **amending Section 2-339 to provide a civil citation penalty;**
7 **providing directions to the codifier; providing a severability**
8 **clause; providing a repealing clause; and providing an effective**
9 **date.**

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11 **WHEREAS,** the City Commission of the City of Gainesville declares that it is in the best
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13 interest of the public health, safety and welfare of its residents and visitors to reduce litter and
14 pollutants on the land and in the waters of the City; and

15 **WHEREAS,** expanded polystyrene is a petroleum-based plastic, most commonly
16 incorrectly referred to by the name of “Styrofoam,” which is actually the proprietary trade name
17 of a polystyrene foam product; and

18 **WHEREAS,** expanded polystyrene containers and single-use carry out plastic bags are
19 detrimental to the environment because they do not fully degrade, they overburden landfills,
20 introduce unsafe chemicals into the environment, become litter and create hazards for land and
21 aquatic animals due to ingestion, and create impediments to waste reduction and recycling goals,
22 while creating unsightly litter; and

23 **WHEREAS,** use and distribution of expanded polystyrene containers and single-use
24 carry out plastic bags by retailers to consumers for use in carrying purchased goods has a
25 detrimental effect on the public health, safety and welfare of the City, County and State; and

26 **WHEREAS,** expanded polystyrene and plastic bags constitute a portion of the litter in
27 the City's streets, parks, public places and waterways; and

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28 **WHEREAS**, as an environmental leader among local governments in the State of
 29 Florida, the goal of the City is to replace expanded polystyrene and single-use carry out plastic
 30 bags with reusable, recyclable, or compostable alternatives whenever possible; and

31 **WHEREAS**, retail establishments such as ALDI, Trader Joes, and Lucky's have
 32 successfully incorporated programs that encourage the use of reusable and/or recyclable
 33 alternatives to single use carry-out plastic bags; and

34 **WHEREAS**, this Ordinance provides for an implementation period (during which this
 35 ordinance will not be enforced) allowing retail establishments to expend their current stock of
 36 expanded polystyrene containers and single-use carry out plastic bags and transition to reusable,
 37 recyclable, or compostable alternatives; and

38 **WHEREAS**, the City Commission finds that this Ordinance is necessary for the
 39 preservation of our environment and the public health, safety and welfare of City residents and
 40 visitors and future generations; and

41 **WHEREAS**, at least 10 days' notice has been given once by publication in a newspaper
 42 of general circulation notifying the public of this proposed ordinance and of public hearings to be
 43 held in the City Commission Auditorium, City Hall, City of Gainesville; and

44 **WHEREAS**, the Public Hearings were held pursuant to the published notice described at
 45 which hearings the parties in interest and all others had an opportunity to be and were, in fact
 46 heard.

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 48 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**
 49 **CITY OF GAINESVILLE, FLORIDA:**

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50 **Section 1.** A new Division 4 within Article III of Chapter 27 is created to read as set
 51 forth below. Except as amended herein, the remainder of Chapter 27 remains in full force and
 52 effect.

53 **CHAPTER 27 - UTILITIES**

54 **ARTICLE III – SOLID WASTE DISPOSAL**

55 **DIVISION 4 – EXPANDED POLYSTYRENE CONTAINERS AND SINGLE-USE** 56 **CARRY OUT PLASTIC BAGS**

57 **Sec. 27-89 – Definitions.**

60 The following words, terms and phrases, when used in this article, shall have the meanings
 61 ascribed to them in this section, except where the context clearly indicates a different meaning:

62 Food service provider means a person or entity that provides food directly to the
 63 consumer, regardless of whether such food is provided free of charge or sold, or whether
 64 consumption occurs on or off premises, or whether the food is provided from a building,
 65 pushcart, stand or vehicle. Food service providers include, but are not limited to, restaurants,
 66 cafes, sidewalk cafes, delicatessens, coffee shops, grocery stores, markets, supermarkets, drug
 67 stores, pharmacies, bakeries, caterers, gas stations, vending or food trucks or carts and cafeterias.

68 Retail establishment means any person or entity engaged in the retail sale of goods.
 69 Retail establishment includes any supermarket, grocery store, convenience store, shop, service
 70 station, farmers' market vendor, and any other sales outlet where a customer can directly
 71 purchase goods, materials, and products.

72 Expanded polystyrene containers means plates, bowls, cups, containers, lids, trays,
 73 coolers, ice chests, food containers and all similar articles that consist of blown polystyrene
 74 and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a

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75 styrene monomer and processed by any number of techniques including but not limited to
 76 fusion of polymer spheres (expandable bead foam), injection molding, foam molding and
 77 extrusion-blown molding (extruded foam polystyrene).

78 Single-use carry out plastic bag means a bag provided to a customer, typically at the
 79 point of sale or distribution, for the purpose of transporting items, which is made predominantly
 80 of plastic derived from petroleum or a biologically-based source.

81 Special event permittee means any entity or person, and their subcontractors, agents or
 82 affiliates, who has been issued a special event permit by the City for a special event on City
 83 property, in a City facility or in the City's right-of-way, for the promotion or sale of their
 84 products and/or businesses.

85 **Sec. 27-90. Prohibition on use of expanded polystyrene and single-use carry out plastic**
 86 **bags.**

87 (a) Food service providers and retail establishments shall not sell, use, offer for sale or
 88 use, or provide food or beverage in expanded polystyrene containers, or provide to any person
 89 a single-use carry out plastic bag.

90 (1) Exceptions: Although the discontinuation of the use of expanded polystyrene
 91 containers and single-use carry out plastic bags is strongly encouraged, this Division shall not
 92 apply to:

93 a. Expanded polystyrene containers used for prepackaged food that have been filled
 94 and sealed prior to receipt by the food service provider or retail establishment;

95 b. Expanded polystyrene containers used to store raw meat or seafood sold from a
 96 butcher case or similar refrigerated display or storage case;

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- 97 c. Compostable bags that (i) conform to the current ASTM D6400; (ii) are certified and
98 labeled as meeting the ASTM D6400 standard specification by a recognized verification
99 entity; and (iii) are capable of undergoing biological decomposition in a compost site
100 such that the material breaks down into carbon dioxide, water, inorganic compounds and
101 biomass at a rate consistent with known compostable materials;
- 102 d. Reusable bags, meaning bags with handles that are specifically designed and
103 manufactured of durable material specifically designed for multiple uses and/or long-
104 term use; or
- 105 e. Any bags without handles provided to a customer (i) to protect food or merchandise
106 from being damaged or contaminated by other food or merchandise, when items are
107 placed together in a reusable bag, including produce bags; (ii) to hold prescription
108 medications dispensed from a pharmacy or veterinary office; (iii) that is designed to be
109 placed over articles of clothing on a hanger, including dry cleaning bags;
- 110 (b) Special event permittees, or any vendor operating under that permittee, shall not sell,
111 use, provide food or drink in, or offer the use of, expanded polystyrene containers or single-use
112 carry out plastic bags in city facilities. Upon warning, the special event permittee or any
113 vendor operating under that permittee must stop use of the expanded polystyrene containers or
114 single-use carry out plastic bags, as applicable. If the special event permittee or any vendor
115 operating under that permittee does not do so within a reasonable amount of time, same shall
116 constitute a city code violation and may result in the revocation of the special event permit and
117 finer.
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120 **Sec. 27-91. - Financial hardship waiver**

121 (a) Any food service provider or retail establishment that reported an annual gross
 122 income/revenue under \$500,000 per location on its income tax filing for the most recent tax
 123 year, and that is not a chain store (three or more stores located within the city that conduct
 124 business under the same business name, or operate under common ownership or management or
 125 pursuant to a franchise agreement with the same franchisor), may request from the city
 126 [commission, or staff?] a financial hardship waiver from compliance with the requirements
 127 of this Division. The city [commission, or staff?] may grant a waiver if the food service
 128 provider or retail establishment provides reasonable evidence of the following:

129 (1) there is no comparable alternative product that would cost the same as or less than the
 130 expanded polystyrene container or single-use carry out plastic bag, and

131 (2) the purchase or use of the more costly alternative product would create an undue
 132 financial hardship. [How is this determined?]

133 (b) If granted, a financial hardship waiver shall be valid for twelve (12) months and may
 134 be renewed upon submittal of a new request for financial hardship waiver.

135 **Sec. 27-91. - Enforcement; penalties; injunctive relief.**

136 The city may enforce this article by civil citation in accordance with Division 6 within
 137 Article V of Chapter 2. In addition, persons who are not in conformity with these requirements
 138 shall be subject to appropriate civil action in the court of appropriate jurisdiction for injunctive
 139 relief.

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141 **Section 2.** Section 2-339 of the Gainesville Code of Ordinances is hereby amended as set
 142 forth below. Except as amended herein, the remainder of Section 2-339 remains in full force and
 143 effect.

144 **Sec. 2-339. - Applicable codes and ordinances.**

145 The following ordinances are enforceable by the procedures described in this division:

<u>27-90</u>	<u>Expanded polystyrene containers and single-use carry out plastic bags</u>	II	<u>\$250.00</u> [Is this the appropriate amount?]
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147 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1
 148 and 2 of this Ordinance shall become and be made a part of the Code of Ordinances of the City
 149 of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be
 150 renumbered or relettered in order to accomplish such intentions.

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152 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance
 153 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
 154 finding shall not affect the other provisions or application of the ordinance which can be given
 155 effect without the invalid or unconstitutional provisions or application, and to this end the
 156 provisions of this ordinance are declared severable.

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158 **Section 5.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
 159 such conflict hereby repealed.

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161 Section 6. This ordinance shall become effective immediately upon adoption; however,
162 to allow time for food service providers and retail establishments to expend their current stock of
163 expanded polystyrene containers and single-use carry out plastic bags and transition to reusable,
164 recyclable, or compostable alternatives, the City will not commence enforcement of this
165 ordinance until 8:00 a.m. on May 4, 2019.

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167 PASSED AND ADOPTED THIS _____ DAY OF _____, 2018.

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LAUREN POE
MAYOR

ATTEST:

Approved as to form and legality

OMICHELE D. GAINNEY
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

This ordinance passed on first reading this ____ day of _____, 2018.

This ordinance passed on second reading this ____ day of _____, 2018.