

Legistar #  
170487

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ORDINANCE NO: 170487

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

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

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

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

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

WHEREAS, expanded polystyrene and plastic bags constitute a portion of the litter in 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.

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

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

52   **CHAPTER 27 - UTILITIES**53   **ARTICLE III – SOLID WASTE DISPOSAL**

54

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

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58   **Sec. 27-89 – Definitions.**

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

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

67           Retail establishment means any person or entity engaged in the retail sale of goods.

68           Retail establishment includes any supermarket, grocery store, convenience store, shop, service  
69 station, restaurant, farmers' market vendor, and any other sales outlet where a customer can  
70 directly purchase goods, materials, and products.

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

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

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

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

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

86 (a) Food service providers and retail establishments shall not sell, use, offer for sale or  
 87 use, or provide food or beverage in expanded polystyrene containers. Food service providers  
 88 and retail establishments shall not sell, use, offer for sale or use, or provide to any person a  
 89 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 article 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 for multiple reuse and made of durable material specifically designed for  
 104 and provided to consumers with the intention of multiple, long-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 or recyclable bag, including produce bags; (ii) to hold  
 108 prescription medications dispensed from a pharmacy or veterinary office; (iii) that is  
 109 designed to be 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.

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

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

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

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

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

|       |  |    |          |
|-------|--|----|----------|
| 27-90 | <u>Expanded polystyrene containers and single-use carry out plastic bags</u> | II | \$250.00 |
|-------|--|----|----------|

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125        **Section 3.** It is the intention of the City Commission that the provisions of Sections 1  
 126 and 2 of this Ordinance shall become and be made a part of the Code of Ordinances of the City  
 127 of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be  
 128 renumbered or relettered in order to accomplish such intentions.

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

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

136        **Section 6.** This ordinance shall become effective immediately upon adoption; however,  
 137 to allow time for food service providers and retail establishments to expend their current stock of  
 138 expanded polystyrene containers and single-use carry out plastic bags and transition to reusable,  
 139 recyclable, or compostable alternatives, the City will not commence enforcement of this  
 140 ordinance until 8:00 a.m. on August 1, 2019.

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142 PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

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ATTEST:

Approved as to form and legality

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OMICHELE D. GAINNEY  
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY  
CITY ATTORNEY

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This ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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This ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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