

ORDINANCE NO. 2019-010

AN ORDINANCE OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING TITLE IX “GENERAL REGULATIONS,” BY CREATING CHAPTER 102, “PROHIBITION ON USE, DISTRIBUTION OR SALE OF SINGLE-USE PLASTICS”; AMENDING CHAPTER 153, “CODE ENFORCEMENT,” BY REVISING SECTION 153.04, “SCHEDULE OF CIVIL PENALTIES” TO CREATE RELATED PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, North Bay Village (“Village”) is committed to environmental conscientiousness, and declares that it is in the interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the lands and in the waters of the Village, and along its shores and beaches; and

WHEREAS, the Village is comprised of islands surrounded by Biscayne Bay and other waterways, all of which support a wide variety of flora and fauna; and

WHEREAS, discarded Single-Use Plastics (including Single-Use Plastic Straws, Single-Use Plastic Bags, and Single-Use Plastic Flatware and Dinnerware as defined in this Ordinance) threaten wildlife and marine life and degrade and litter the beaches and waters off of Florida’s coast, which include areas within the Village; and

WHEREAS, Single-Use Plastics are neither readily recyclable nor biodegradable, and take hundreds of years to degrade; and

WHEREAS, Single-Use Plastics constitute a portion of the litter in the Village’s streets, parks, public places, and waterfront areas; and

WHEREAS, Single-Use Plastics contribute to overburdened landfills, threaten wildlife and marine life, and degrade and litter drainage and sewage systems, as well as the beaches and waters off the Florida coast, which include areas within the Village; and

WHEREAS, Single-Use Plastic Bags are photo-biodegradable and break down into smaller pieces which can make their way into the food chain via such animals as jellyfish and endangered sea turtles; and

WHEREAS, the sale and distribution of Single-Use Plastics has a detrimental effect on the Village's environment, and that of surrounding jurisdictions; and

WHEREAS, several companies have announced plans to phase out and discontinue the use of plastic straws in their establishments worldwide; various municipalities have adopted their own plastic straw prohibitions; and members of the media and public have expressed their satisfaction and concerns with plastic straw prohibitions; and

WHEREAS, the City of Coral Gables has adopted a plastic bag prohibition, and in *Florida Retail Federation. Inc. and Super Progreso Inc. v. The City of Coral Gables*, Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), the Court held that Sections 403.708(9) and 403.7033 of the Florida Statutes, relating to plastic bags and packaging, are unconstitutionally vague; and

WHEREAS, the appeal from this decision has been argued in the Third District Court of Appeal (Case No. 3D-2017-562), but no opinion has been released and the effectiveness of the Circuit Court decision has not been stayed; and

WHEREAS, the City of Miami Beach has adopted a prohibition on Single-Use Plastic Bags in the City's approved sidewalk cafes and on City property and rights-of-way, and further prohibited use of plastic straws and stirrers by its contractors and special event permittees

and use on City property and beaches, all of which have been enforced since February 1, 2019; and

WHEREAS, the Village Commission finds that there are reasonable, environmentally-friendly alternatives to Single-Use Plastics; and

WHEREAS, the Village Commission via Ordinance No 2015-14 passed and adopted an ordinance banning the use of expanded polystyrene food service articles by food service providers, food stores, and Village contractors; and

WHEREAS, the Village in from 2015 to 2017 passed several resolutions supporting the local control of regulating the use of single use plastic bags; and

WHEREAS, the Village Commission desires to amend the Code of Ordinances as specified herein; and

WHEREAS, the Village Commission finds that this Ordinance is necessary for the preservation and improvement of the environment, public health, safety and welfare of the Village's residents and visitors and future generations.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Village Code Amended. Title IX of the Code of Ordinances of North Bay Village, entitled "General Regulations," is here by amended as follows:

TITLE IX: - GENERAL REGULATIONS

* * *

Chapter 102 – Prohibition on Single Use Plastic Articles

Sec. 102.01. – Definitions.

For the purposes of this article, the following terms shall have the ascribed meanings unless expressly stated otherwise:

Commercial Establishment means a property used for commercial purposes, such as a hotel, restaurant, café or retail store or vendor, or similar uses located in a multi-family residential building whether or not the use is open to the public, where customers can directly purchase goods and materials.

Compostable Carryout Bag means a bag that:

- (1) Conforms to the current ASTM D6400;
- (2) Is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and
- (3) Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.

Recyclable Paper Bag means a bag that contains a minimum average of 40 percent post-consumer recycled materials and displays the minimum percent of post-consumer content on the outside of the bag.

Reusable Bag means a bag with handles that is specifically designed and manufactured for multiple reuse and made of durable material specifically designed for and provided to customers with the intention of multiple, long-term use and does not include any film plastic bags. Includes Recyclable Paper Bags and Compostable Carryout Bags.

Single-Use Plastics means Single-Use Plastic Bags, Single-Use Plastic Flatware and Dinnerware, and Single-Use Plastic Straws as defined herein.

Single-Use Plastic Bag means a bag provided by a company or individual to a customer of a Commercial Establishment, typically at the point of sale, for the purpose of transporting purchases, which is made predominantly of plastic derived from one or more of the following: petroleum, a biologically-based source (such as corn or other plants), or polystyrene, polypropylene, or polyethylene. This definition includes bags provided to a customer to transport items provided free of charge, including but not limited to, samples and informational materials. The following shall not be interpreted to be "Single-Use Plastic Bags":

- (a) A Compostable Carryout Bag;
- (b) Any bag without handles provided to a customer;
- (c) Any bag to protect food or merchandise from being damaged or contaminated by other food or merchandise, when items are placed together in a reusable bag or recyclable bag, including produce bags;
- (d) Any bag to hold prescription medications dispensed from a pharmacy or veterinary office;
- (e) Any bag designed to be placed over articles of clothing on a hanger, including dry cleaning bags;

- (f) Door hanger bags;
- (g) Newspaper bags;
- (h) Garbage bags;
- (i) Pet waste bags;
- (j) Yard waste bags; and
- (k) Bags of any type that a customer previously owned and brings to a Commercial Establishment for his or her own use in carrying away store goods.

Single-Use Plastic Flatware and Dinnerware means eating and serving utensils and plates, bowls, cups, and glasses provided by a company or individual to a customer of a Commercial Establishment, typically at the point of sale, made predominantly of plastic derived from one or more of the following: petroleum, a biologically-based source (such as corn or other plants), or polystyrene, polypropylene, or polyethylene. Single-Use Plastic Flatware and Dinnerware does not include flatware and dinnerware made of non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials.

Single-Use Plastic Straw means a straw or stirrer provided, sold, or distributed for the purpose of imbibing liquids or transferring a beverage from its container to the mouth of the drinker by suction or for the purpose of mixing a beverage, provided by a company or individual to a customer of a Commercial Establishment, typically at the point of sale, which is made predominantly of plastic derived from one or more of the following: petroleum, a biologically-based source (such as corn or other plants), or polystyrene, polypropylene, or polyethylene. A Plastic Straw does not include a straw that is made of non-plastic materials, such as paper, sugar cane, bamboo, or other similar materials, and does not apply to pre-packaged drinks.

Public Food Service Establishment means any establishment defined under F. S. § 509.013(5)(a) as amended from time to time, excluding those restaurants in the OF Oceanfront District that are accessory uses to multi-family residential buildings and have not received an exemption under Village Code.

Tip means any gratuity or service charge associated with a bill.

Village Facility includes, but is not limited to, any building, structure, park, beach, road, street, right-of-way, or other facility owned, operated or managed by the Village.

Village Property includes, but is not limited to, any land, water, or air rights owned, operated or managed by the Village.

Sec. 102.02 – Prohibition on use, distribution or sale of Single-Use Plastics

(a) Intent. Single-Use Plastics are neither readily recyclable nor biodegradable, and take hundreds of years to degrade. The intent of this section is to reduce litter impacting the beach and the ocean by reducing the use of Single-Use Plastics and replacing them with reusable materials.

(b) Single-Use Plastics Prohibited; Exceptions

(1) Single-Use Plastics, as defined in Section 102.01, shall not be used, sold, or distributed by any Commercial Establishment or at any Village Facility or Village Property.

(2) Single-Use Plastics, as defined in Section 102.01, shall not be used, sold or distributed as part of a Village-approved activity or event, whether private or public, in any Village Facility or Village Property.

(3) Exceptions.

(i) This prohibition shall not apply to medical or dental facilities.

(ii) This prohibition shall not apply to the school district or county, state, or federal governmental entities.

(iii) This prohibition shall not apply where a reasonable accommodation is needed by an individual due to a medical or physical condition, or a religious belief.

(c) Enforcement; Penalties

(1) Following adoption of this Section, the Village shall engage in public education efforts to inform Commercial Establishments and users of Village facilities and properties of the provisions of this Section and to provide assistance with identifying alternatives to Single-Use Plastics.

(2) Beginning August 1, 2019, the Village's Code Compliance Department shall begin 90-day education period and, thereafter, a 60-day period of providing written warnings for violations of this section. Beginning on December 29, 2019 the Department shall enforce all provisions of this Section.

(3) Penalties for violations of the provisions of this Section shall be enforced through Chapter 153 "Code Enforcement" of the Village Code. Fines shall be in the amounts prescribed in the schedule of civil penalties at Section 153.04.

(d) Reusable Bags. Commercial Establishments are strongly encouraged to educate their staff to promote Reusable Bags and to post signs encouraging customers to use Reusable Bags. Should Commercial Establishments provide carryout bags, they shall be Reusable Bags (as defined in Section 9-1), offered free of charge or for a fee as determined by the merchant. Commercial Establishments may keep any fees charged to offset the cost of providing the Reusable Bag.

Section 3. Village Code Amended. Chapter 153 of the Code of Ordinances of

North Bay Village, entitled "Code Enforcement," is hereby amended as follows:

TITLE XV: - LAND USAGE

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Chapter 153 - CODE ENFORCEMENT

Sec. 153.04. - Schedule of civil penalties.

<u>Section</u>	<u>Description of Violation</u>	<u>Penalty</u>
102.02	Distributing or selling or using single-use plastics	250.00 for a commercial establishment
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Section 3. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in Code. The provisions of this Ordinance shall become and be made a part of the Village Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word

Section 6. Implementation. The Village Manager, Village Attorney, and Village Clerk are hereby authorized to take such further action as may be needed to implement the purpose and provisions of this Ordinance

Section 7. Effective Date. That this Ordinance shall become effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Wilmoth, who moved its adoption on second reading. This motion was seconded by Commissioner Strout and upon being put to a vote, the vote was as follows:

Mayor Brent Latham	<u>YES</u>
Vice Mayor Marvin Wilmoth	<u>YES</u>
Commissioner Jose R. Alvarez	ABSENT
Commissioner Andreana Jackson	ABSENT
Commissioner Julianna Strout	<u>YES</u>

PASSED on first reading on this 9th of July, 2019.

PASSED AND ENACTED on second reading on this 22nd day of July, 2019.



Brent Latham
Mayor

ATTEST:



Elora Riera,
Village Clerk

APPROVED AS TO LEGAL SUFFICIENCY:



Weiss Serota Helfman Cole & Bierman, PL
Village Attorney