

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 9 "BUSINESS REGULATIONS AND BUSINESS TAX," ARTICLE I "IN GENERAL" OF THE VILLAGE'S CODE OF ORDINANCES TO AMEND SECTION 9-1 "DEFINITIONS," TO AMEND REFERENCES TO DEFINED TERMS IN SECTION 9-2 "AUTOMATIC TIP REGULATIONS," AND TO CREATE SECTION 9-3, "PROHIBITION ON USE, DISTRIBUTION OR SALE OF SINGLE-USE PLASTICS"; AMENDING CHAPTER 2 "ADMINISTRATION," ARTICLE V "CODE ENFORCEMENT," SECTION 2-191 "SCHEDULE OF CIVIL PENALTIES" TO CREATE RELATED PENALTIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND FOR AN EFFECTIVE DATE.

WHEREAS, Bal Harbour Village ("Village"), a world renowned tourist destination, 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 located on an island surrounded by the Atlantic Ocean 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 Council finds that there are reasonable, environmentally-friendly alternatives to Single-Use Plastics; and

WHEREAS, the Village Council wishes to amend Chapter 9 of the Village's Code to create definitions in Section 9-1 and to create Section 9-3 to prohibit the use, sale and

distribution of Single-Use Plastics in Commercial Establishments and at Village-approved events and activities, whether public or private, at Village facilities and properties; and

WHEREAS, the Village Council wishes to amend Chapter 2 "Administration," Article V "Code Enforcement" to amend Section 2-191 "Schedule of Civil Penalties" to create a penalty for violations created by this Ordinance; and

WHEREAS, the Village Council 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 THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Village Code Amended - Chapter 2.** That "Article V "Code Enforcement" of Chapter 2 "Administration" of the Code of Bal Harbour Village, Florida, is hereby amended to amend Section 2-191 "Schedule of Civil Penalties" to read as follows, with the following penalties renumbered accordingly:¹

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

Chapter 2 - ADMINISTRATION

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ARTICLE V. - CODE ENFORCEMENT

Sec. 2-191. - Schedule of civil penalties.

(a) The following table shows the sections of this Code, as they may be amended from time to time, and the dollar amount of civil penalty for the violation of these sections as they may be amended. Each "Description of Violations" below is for informational purposes only and is not meant to limit or define the nature of the violations or the subject matter of the listed Code sections. To determine the exact nature of the activity proscribed or required by this Code, the relevant Code section must be examined.

(b) The following is the schedule of civil penalties:

	Code section	Description of violation	Civil penalty
* * * * *			
(12)	6-111 through 6-145	Demolishing a structure without a permit; failing to comply with demolition permit or plan or with regrading and revegetation plans	250.00
<u>(13)</u>	<u>9-3</u>	<u>Distributing or selling or using single-use plastics</u>	<u>250.00 for a commercial establishment</u> <u>25.00 for an individual</u>
(13) <u>(14)</u>	9-28, 9-32	Failing to obtain a local business tax receipt	250.00
* * * * *			

(c) For violations of any section of this Code for which a specific penalty is not prescribed in section (b), a penalty shall be imposed which shall not exceed \$250.00 per day for a first violation and shall not exceed \$500.00 per day for a repeat violation. For the purposes of continuing violations, each day shall constitute a separate violation.

Section 3. Village Code Amended - Chapter 9. That Article I "In General" of Chapter 9 "Business Regulations and Business Tax" of the Code of Bal Harbour Village, Florida, is hereby amended to amend Section 9-1 "Definitions" and to create Section 9-3 "Prohibition on distribution, sale or use of Single-Use Plastics", to read as follows:

Chapter 9 - BUSINESS REGULATIONS AND BUSINESS TAX

ARTICLE I. - IN GENERAL

Sec. 9-1. - Definitions.

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

Automatic tip means any tip that is automatically generated and placed by a public food service establishment on a bill for service issued to a customer.

Bill means any receipt, writing, or other method used by a public food service establishment to indicate the amount of money it is owed by a customer in exchange for its goods and services. "Bill" shall be interpreted to include, but not be limited to, the restaurant receipt and the credit card merchant copy.

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 ~~or 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 Section 21-281(8)f.

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. 9-2. - Automatic tip regulations.

(a) Each Public Food Service Establishment shall disclose that any Automatic Tip is voluntary, and do so in a manner that notifies customers that it has been added to the amount of the Bill by distinguishing it from all other amounts on the Bill. Such manner may include, but shall not be limited to:

(1) Text indicating the Automatic Tip that is a different color from all other text on the Bill.

(2) A decal or stamp indicating the Automatic Tip that is affixed or stamped upon the face of the Bill.

(3) Text indicating the Automatic Tip on the Bill in a typeface that is at least 1.5 times larger than all other text on the Bill.

(b) The Automatic Tip amount is a disclosure only, and payment of the Automatic Tip in the suggested amount must not be mandated by the Public Food Service Establishment. However, an Automatic Tip for groups of six or more customers may be mandatory if the other requirements of subsection (a) are met.

(c) The Village Manager may develop administrative procedures and timelines for the initial implementation and enforcement of this Section. Implementation and enforcement will begin no later than February 1, 2018.

(d) *Enforcement and penalties.*

(1) Each new Public Food Service Establishment shall attach a sample copy of a Bill displaying the Automatic Tip to its application for issuance of its certificate of use under Section 21-32(b) and first business tax receipt issued pursuant to Article II of Chapter 9, beginning February 1, 2018, and an affidavit that states it will comply with the regulations of this Section by utilizing the format reflected on the sample copy of the Bill submitted with the application until its business tax receipt expires.

(2) The enforcement procedures outlined herein are cumulative to all other remedies authorized by law. Nothing in this Section shall prohibit the Village from enforcing this Section by any other means. Citation for violation of this Section may be issued by the Village Manager or designee to the Public Food Service Establishment, in accordance with the following schedule of penalties:

a. *First violation:* the Village Manager or designee shall provide a warning that the Public Food Service Establishment has committed a violation of this Section and shall provide said establishment five days to correct the violation.

b. *Second violation:* a civil infraction in the amount of \$250.00 for a violation of this Section may be issued if, upon personal investigation, the Village Manager or designee finds that the Public Food Service Establishment has not corrected the violation within five days.

c. *Third violation:* a civil infraction in the amount of \$500.00 may be issued should the Village Manager or designee find that the Public Food Service Establishment remains in violation of this Section five days after the initial civil infraction of \$250.00 was issued. Violations occurring more than a year following a prior warning or citation will be deemed a first violation by the establishment.

d. *Habitual offender:* a Public Food Service Establishment that is found to have violated this Section after having received a civil infraction for a third violation of this Section shall be issued a written notice to appear before a

special master for a hearing on the violation in accordance with the applicable requirements of Article V "Code Enforcement" of Chapter 2 "Administration" of this Code. At such hearing, if the special master finds that the Public Food Service Establishment is guilty of violating this Section, the special master shall proceed to impose fines in the amount of \$500.00 per day. A fine imposed pursuant to this part shall continue to accrue until the Public Food Service Establishment comes into compliance. In addition to or in the alternative of the per day fines, the special master may order that the Public Food Service Establishment's business tax receipt be revoked by the Village.

e. *Failure to disclose:* each Bill which fails to include the disclosure required by Sections 9-2(a) and (b) will constitute a violation of this Section.

Sec. 9-3 - 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 9-1, shall not be used, sold, or distributed in any Commercial Establishment ~~or at any Village Facility or Village Property.~~

(2) Single-Use Plastics, as defined in Section 9-1, 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)~~(2)~~ 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 October 1, 2019, the Village's Code Compliance Department shall begin a 60-day period of providing written warnings for violations of this section.

Beginning on December 1, 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 2, Article V "Code Enforcement" of the Village Code. Fines shall be in the amounts prescribed in the schedule of civil penalties at Section 2-191.

(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. 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 4. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflict. That 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 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading. The Village Manager shall have the discretion to delay the start of enforcement of this Ordinance beyond December 1, 2019 as he may deem necessary. In the event that Florida Statutes are amended to preempt any part of this Ordinance following the 2019 Legislative Session, this Ordinance may be repealed to the extent of that preemption by resolution of the Village Council.

PASSED AND ADOPTED on first reading this 19th day of March, 2019.

PASSED AND ADOPTED on second reading this 16th day of April, 2019.

Gabriel Groisman, Mayor



ATTEST:

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney