



Town of Concord

Office of the Town Clerk
22 Monument Square
P.O. Box 535
Concord, Massachusetts 01742-0535

ANNUAL TOWN MEETING APRIL 4, 5 and 6, 2016

SUBJECT TO APPROVAL OF THE ATTORNEY GENERAL

BYLAW PROHIBITING POLYSTYRENE IN FOOD SERVICE WARES

ARTICLE 45. On a **MOTION** made by Scott Richardson and duly seconded, the following was **VOTED**:

To amend the Town Bylaws by adding a Bylaw for the prohibition of polystyrene in food service ware and packaging, as follows:

Section 1. PURPOSE AND INTENT

WHEREAS, the Town has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance, classified by the National Toxicology Program (NTP) as "reasonably anticipated to be a human carcinogen" and also recognized by the NTP as a potential food and beverage contaminant that may "leach from polystyrene containers used for food products"; and

WHEREAS, polystyrene is made from fossil fuels, a non-renewable resource; and

WHEREAS, polystyrene manufacture, use, and disposal requires substantial energy consumption and contributes to greenhouse gases and other adverse environmental effects; and

WHEREAS, polystyrene is not biodegradable or compostable, and is generally not recyclable; and

WHEREAS, polystyrene is a common environmental pollutant that fragments into smaller pieces that harm or kill marine life and wildlife when they ingest them; and

WHEREAS, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy"; and

WHEREAS, polystyrene is used as food service ware by food establishments operating in the Town; and

WHEREAS, disposable food service ware constitutes a portion of the litter in Concord's streets, parks and public places, which increases Town costs; and

WHEREAS, affordable and effective ways to reduce the negative environmental impacts of polystyrene products through the use of reusable, recyclable, biodegradable and/or compostable

materials are available for food service applications; and

WHEREAS, over 100 municipalities throughout the United States, Canada, Europe, and Asia have banned polystyrene food service ware;

NOW THEREFORE, the Town of Concord hereby enacts this bylaw to prohibit the use and distribution of foam and rigid polystyrene in food service ware and require the use and distribution of biodegradable, compostable, reusable, or recyclable products or materials in their place.

Section 2: DEFINITIONS

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings;

ASTM STANDARD Refers to materials meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate.

BIODEGRADABLE Materials that will completely degrade and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

COMPOSTABLE Materials that will completely degrade into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, such that any customer or processor can easily distinguish the ASTM Standard compostable plastic from non-ASTM Specification compostable plastic.

DISPOSABLE FOOD SERVICE WARE All containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, and other items designed for one-time or non-durable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at food establishments.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a "Food Establishment" for purposes of this ordinance.

POLYSTYRENE The term means and includes blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS), which are thermoplastic petrochemical materials 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); and in this chapter is referenced as "Foam Polystyrene." Foam Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

The term also means and includes clear or solid polystyrene which is also

known as "oriented," and referenced in this chapter as "Rigid Polystyrene." "Rigid Polystyrene" is

generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town of Concord. Prepared food may be eaten either on or off the premises, also known as "takeout food."

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail stores and vendors selling clothing, food, and personal items, and dry cleaning services

REUSABLE Materials that will be used more than once in its same form by a business establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable also includes durable containers, packages, or trays used on- premises or returnable containers brought back to the food establishment.

Section 3. PROHIBITED USE AND DISTRIBUTION OF DISPOSABLE FOOD SERVICE WARE

- 3 (a) Food establishments are prohibited from providing prepared food to customers in Foam Polystyrene or Rigid Polystyrene food service ware.
- 4 (b) All food establishments using any disposable food service ware will use biodegradable, compostable, reusable or recyclable food service ware. All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on-premises.
- 5 (c) Retail establishments are prohibited from selling or distributing foam polystyrene or rigid polystyrene food service ware to customers unless equivalent biodegradable, compostable, reusable, or recyclable food service ware products are available for sale and are clearly labeled such that any customer can distinguish easily the biodegradable, compostable, reusable, or recyclable food service ware products.

Section 4. EXEMPTIONS

- (a) Foods prepared or packaged outside the Town of Concord are exempt from the provisions of this chapter.
- (b) Food establishments and retail establishments will be exempted from the provisions of this chapter for specific items or types of disposable food service ware if the Town Manager or his/her designee finds that a suitable biodegradable, compostable, reusable, or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship.

- (c) Any person may seek an exemption from the requirements of this chapter by filing a request in writing with the Town Manager or his/her designee. The Town Manager or his/her designee may waive any specific requirement of this chapter for a period of not more than one year if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an "undue hardship" is a situation unique to the food establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that food establishment. A person granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. The Town Manager's or his/her designee's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.
- (d) Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

Section 5. ENFORCEMENT: VIOLATIONS AND PENALTIES

Enforcement of this bylaw shall be the responsibility of the Town Manager or his/her designee. The Town Manager shall determine the inspection process to be followed, incorporating the process into other town duties as appropriate. On or after July 1, 2017, any food or retail establishment subject to this bylaw and found to be in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Appendix A of the Regulations for Enforcement of Town Bylaws under M.G.L. Chapter 40, §21D and the Bylaw for Non-Criminal Disposition of Violations adopted under Article 47 of the 1984 Town Meeting, as amended. Any such fines shall be paid to the Town of Concord.

Section 6. SEVERABILITY: EFFECTIVE DATE

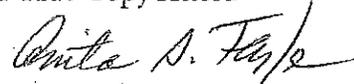
- (a) Each section of this chapter shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that chapter and all other chapters shall continue in full force.
- (b) This Bylaw shall take effect January 1, 2017.

And to amend Appendix A of the Non-Criminal Disposition Bylaw by adding the following:

Bylaw	Fine Schedule	Fine Allowed	Enforcement Agency
Bylaw Prohibiting Polystyrene in Food Service Ware	1 st offense	Warning	Town Manager's Designee
	2 nd offense	\$50.00	
	3 rd offense	\$100.00	
	4 th & each subsequent offense	\$200.00	

Passed by a Declared Near Unanimous Vote
April 6, 2016

A True Copy Attest:


Anita S. Tekle
Town Clerk