

Order 261-13/14

Passage as Amended: 6-3 (Mavodones, Coyne, Leeman) on 6/16/2014      Effective 4/15/2015

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**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 12 GARBAGE, WASTES AND JUNK  
ARTICLE VII and ARTICLE VIII. POLYSTYRENE  
RE: POLYSTYRENE FOAM**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Article VII, Rendering Wastes, of the Portland City Code is hereby amended and a new Article VIII is hereby enacted to read as follows:*

- Sec. 12-206. Reserved.**
- Sec. 12-207. Reserved.**
- Sec. 12-207. Reserved.**
- Sec. 12-208. Reserved.**
- Sec. 12-209. Reserved.**

**ARTICLE VIII. POLYSTYRENE**

**Sec. 12-210. Findings; purposes.**

The city town council hereby finds as follows:

- (1) Polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of PortlandTown of Cape Elizabeth.
- (2) The City of PortlandTown of Cape Elizabeth desires to protect the natural environment.
- (3) There is no economically feasible means of recycling polystyrene foam locally.
- (4) Disposable food containers made from polystyrene foam constitute a portion of the litter in Portland's Cape Elizabeth's streets, parks and public places that increases city maintenance costs.

- (5) Polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.
- (6) The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (38 M.R.S. §§ 1651-1654).
- (7) The CityTown's goal is to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives.
- (8) Such alternatives are readily available.

#### **Sec. 12-211. Definitions.**

As used in this Article the following terms have the following meanings:

"*Food Packager*" means any person located within the Town of Cape ElizabethCity of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products;

"Prepared food" means food or beverages which are served at the food vendor's location having been previously prepared elsewhere or are prepared at the vendor's location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. "Prepared food" does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

"Polystyrene foam" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) 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, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the

term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."

"Retail Vendor" means any person, restaurant, store, shop, sales outlet or other establishment, including without limitation, a grocery store, convenience store or a delicatessen located within the City of Portland Town of Cape Elizabeth which offers prepared food for retail sale.

**Sec. 12-212. Prohibitions.**

(a) No retail vendor in the Town of Cape Elizabeth City of Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the Town of Cape Elizabeth City of Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City Town shall not use polystyrene foam food or beverage containers at any CityTown facility or City-sponsored event.

(d) No CityTown department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the CityTown shall be prohibited from using polystyrene foam food and beverage containers in CityTown facilities or on CityTown-funded projects within the CityTown.

**Sec. 12-213. Exemptions.**

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) Retail vendors and food packagers that are currently existing or are established in the cityTown by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the CityTown Manager or his/her designee in writing on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

(c) Retail vendors, food packagers, cityTown departments, cityTown facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the CityTown Manager to be an emergency for the immediate preservation of the public peace, health or safety.

**Sec. 12-214. Violations and enforcement.**

The CityTown Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the CityTown Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be punishable by fines as follows:

- (a) A fine not exceeding \$250 for the first violation in a one-year period;
- (b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

**Sec. 12-215. Effective Date**

- (a) This Article shall become effective on April 15, 2015.

(b) This Article shall be null and void if and as long as there is developed and maintained an effective cityTown-wide recycling program approved by the CityTown's Director of Public Services for polystyrene foam food and beverage containers.

(c) The provisions of this Article shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

**Sec. 12-216. Severability.**

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be

affected thereby and shall continue in full force and effect.  
To this end, provisions of this Article are severable.