

POLYSTYRENE FOAM

Article

Sec. #. Purpose. The purpose of this ordinance is to replace polystyrene foam food containers used by retail food vendors in the Town of Cape Elizabeth with reusable, compostable, or recyclable alternatives.

Sec. #. Definitions.

- (a) **Food Packager.** Shall mean any person located within the Town who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (b) **Prepared Food.** Shall mean 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.
- (c) **Polystyrene Foam.** Shall mean blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) that 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 ordinance, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."
- (d) **Retail Vendor.** Shall mean any person, restaurant, store, shop, sales outlet or other establishment including, without limitation, a grocery store, convenience store or delicatessen, located within the Town that offers prepared food for retail sale.

Sec. #. Prohibitions.

- (a) No retail vendor in the Town shall serve or sell prepared food in polystyrene foam containers and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.
- (b) No retail vendor in the Town that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

- (c) The Town shall not use polystyrene foam food or beverage containers at any Town facility or Town sponsored event.
- (d) No Town department or facility shall purchase or acquire polystyrene foam food or beverage containers.
- (e) All parties who contract with the Town shall be prohibited from using polystyrene foam food and beverage containers in Town facilities or on Town funded projects within the Town.

Sec. #. Exemptions.

- (a) The sale and packaging of raw seafood for shipment is exempt from the provisions of this ordinance.
- (b) A retail vendor or food packager that is currently existing or is established in the Town before the effective date of this ordinance may be exempted from the provision of this ordinance prohibiting the use of polystyrene foam for a period of time to be determined by the Town Manager or his/her designee if the retail vendor or food packager requests an exemption in writing from the Town Manager and demonstrates to the Town Manager or his/her designee that compliance with the provision constitutes undue hardship for the retail vendor or food packager. Undue hardship includes, but is not limited to, situations unique to the food vendor that are not generally applicable to other retail vendors or food packagers in similar circumstances. The Town Manager or his/her designee shall make a written decision on each exemption request.
- (c) Retail vendors, food packagers, Town departments, facilities and contractors are exempt from the provisions of this ordinance in a situation deemed by the Town Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

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

Violations of this ordinance shall be civil violations 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. #. Effective Date. This ordinance shall become effective on...

- (a) This ordinance shall be automatically repealed on the day, as determined by the Town Council by order, that statewide legislation or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this ordinance or in the event, as determined by the Town Council by order, that a pertinent Maine or federal administrative agency enacts regulations preempting such action.

Sec. #. Severability. If any part or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance, 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 ordinance are severable.

Comment [KL1]: I'm not sure why this is in the PS foam Article and not in the single-use bag article. Suggest being consistent and either keeping or omitting in both.