

CITY OF SOMERVILLE

ORDINANCE NO. 2013-03

IN THE BOARD OF ALDERMEN: May 23, 2013

WHEREAS, Expanded polystyrene food containers form a portion of the solid waste stream going into our landfills and incinerators. Local landfills are running out of room and expansion of incinerator capacity is opposed by many people who live near them. Our future solid waste may have to be transported hundreds of miles to a landfill or incinerator at considerable cost.

WHEREAS, Expanded polystyrene food containers constitute a significant portion of the trash and litter found on or in the streets, drains, and waterways within the City.

WHEREAS, Expanded polystyrene food containers are not easily recyclable, nor are they biodegradable. Once buried in our landfills, they will persist for centuries.

WHEREAS, Styrene, the key ingredient in expanded polystyrene, was recently added to the National Toxicology Program's Report on Carcinogens (U.S. Department of Health and Human Services).

WHEREAS, Many communities in the United States have previously banned expanded polystyrene food containers, including but not limited to Seattle, WA, San Francisco, CA, Berkeley, CA, Malibu, CA, Alameda, CA, Oakland, CA, Palo Alto, CA, Orange County, CA, Santa Monica, CA, Monterey, CA, San Mateo County, CA, Santa Cruz County, CA, Glen Cove, NY, Suffolk County, NY, Portland, OR, Freeport, ME, Great Barrington, MA, Nantucket, MA, Brookline, MA, and Amherst, MA.

WHEREAS, A number of Somerville food establishments do not use expanded polystyrene food containers. Alternative compostable, easily recyclable, or biodegradable food container products are readily available.

WHEREAS, Thus, regulation of the use of expanded polystyrene food containers is in the best interest of the health and welfare of City inhabitants.

NOW THEREFORE, Be it ordained by the Board of Aldermen, in session assembled, that Chapter 8, Article XVI of the Code of Ordinances of the City of Somerville, is hereby inserted as follows:

SECTION 8-351 PURPOSE

This ordinance is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the City.

SECTION 8-352 DEFINITIONS

“City Facility” means any building, structure, land, or recreational area owned, leased, or operated by the City of Somerville.

“Disposable Food Service Container” means single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages, including without limitation, take-out foods and/or leftovers from partially consumed meals prepared by a food establishment. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, or utensils. It does not include single-use disposable packaging for unprepared foods.

“Food Establishment” means any 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.

“Expanded Polystyrene” means blown polystyrene (polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam) and expanded and extruded forms, 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).

“Prepared Food” means any food or beverage prepared on the food establishment’s premises, using any cooking or food preparation technique. Prepared food does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation. Prepared food may be eaten on or off the food establishment’s premises.

SECTION 8-353 PROHIBITION

A. Except as provided herein, on and after the date that is one (1) year from the enactment of this ordinance:

(1) Food establishments are prohibited from dispensing prepared food to customers in disposable food service containers made from expanded polystyrene;

(2) City departments or agencies shall not purchase or use disposable food service containers made from expanded polystyrene while in the performance of official city duties; and

(3) Individuals, contractors, vendors, or other entities shall not use disposable food service containers made from expanded polystyrene in a City Facility while acting or performing under a city contract, lease, license, permit, grant, or other agreement.

B. Nothing in this section shall prohibit city employees from purchasing or using said containers for personal use.

SECTION 8-354 LIST OF AVAILABLE ALTERNATIVES

Not later than 30 days before the date set forth in section 8-353(a) of this ordinance, the Director of Environment and Sustainability shall adopt a list of available suitable affordable biodegradable/compostable or recyclable alternatives for each product type, which shall be updated regularly.

SECTION 8-355 ENFORCEMENT; PENALTIES AND FINES

A. The Health Department, Inspectional Services Department, or their designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Health Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this section or to obtain compliance with this section, including, but not limited to, inspecting any food establishment’s premises to verify compliance in accordance with applicable law. The food service permit for any food establishment failing to comply with this ordinance may be suspended or revoked, upon notice and a hearing before the permitting authority, in accordance with applicable law.

B. This ordinance may be enforced through any lawful process and the election of one remedy shall not preclude enforcement through any other lawful means.

C. Any violation(s) of this section are subject to a penalty in accordance with Section 1-11 of the Code of Ordinances. Multiple violations of this section on any one (1) calendar day shall constitute a single offense.

Be it further ordained by the Board of Aldermen, Section 1-11(b) of the Code of Ordinances is hereby amended by inserting the following language providing for penalties:

<u>Offense</u>	<u>Fine</u>	<u>Enforcing Personnel</u>
Polystyrene Ban (Section 8-353)	1 st Offense: Warning 2 nd Offense within 1 year: \$100 3 rd & Subsequent Offense within 1 year: \$300	Health inspectors; Inspectional services division

Approved:

President
Board of Aldermen