

**TOWN OF TOPSHAM, MAINE
AMENDMENT TO MUNICIPAL CODE OF ORDINANCES:**

“Ban on Polystyrene Foam Food & Beverage Containers Act”

extracted from

https://www.topshammaine.com/vertical/sites/%7B95A28B10-4485-4BEC-B8FC-5E8BF056A147%7D/uploads/Bag_Fee_Polystyrene_Ban.docx

Whereas, polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the Town of Topsham; and

Whereas, the Town of Topsham desires to protect the natural environment; and

Whereas, there is no economically feasible means of recycling polystyrene foam locally; and

Whereas, disposable food containers made from polystyrene foam constitute a portion of the litter in Topsham’s streets, parks and public places that increases town maintenance costs; and

Whereas, 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; and

Whereas, 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.A. §§ 1651-1654); and

Whereas, the Town’s goal is to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives; and

Whereas, such alternatives are readily available;

Now therefore, the Town of Topsham adopts the following ordinance regulating the use of polystyrene foam in consumer packaging.

Chapter XX – CONSUMER PACKAGING

XX-101. Definitions.

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

“*Food Packager*” means any person 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 that 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 referred to as 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, delicatessen, hospital, school, or community center.

XX-102. Prohibitions.

- (a) No retail vendor shall serve or sell prepared food in polystyrene foam containers and shall not package meat, eggs, bakery products or other food in polystyrene foam containers.
- (b) No food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.
- (c) No retail vendor that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.
- (d) Retail vendors that receive items, pre-packaged in polystyrene foam food or beverage containers, packaged outside the Town of Topsham, may re-sell such items without repackaging those items.
- (e) The Town shall not use polystyrene foam food or beverage containers at any Town facility or Town-sponsored event.
- (f) No Town department or facility shall purchase or acquire polystyrene foam food or beverage containers.
- (g) 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.

XX-103. Exemptions.

- (a) The sale and packaging of raw and live seafood is exempt from the provisions of this Chapter.
- (b) Retail vendors and food packagers that are currently existing or are established in the town by the effective date of the ordinance will be exempted from the provision of this Chapter prohibiting the use of polystyrene foam for a period of time to be determined by the Town 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, and not generally applicable to other persons in similar circumstances.
- (c) Retail vendors, food packagers, town departments, town facilities and contractors shall be exempt from the provisions of this Chapter, in a situation deemed by the Town Manager to be an emergency for the preservation of the public peace, health or safety.

XX-104. Violations and enforcement.

The Code Enforcement Officer or his/her designee(s), or other official designated by the Town Manager, shall have the primary responsibility for enforcement of this Chapter. If the Code Enforcement Officer or his/her designee(s), or other official designated by the Town Manager, determine(s) that a violation of this Chapter has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred. Penalties for violation of this Chapter shall be:

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

XX-105. Effective Date.

Notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, this ordinance shall be effective at the expiration of 180 days after the date of its passage.

XX-106. Severability.

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