

Article 6 - Consumer [Polystyrene Foam] Packaging (11/8/2017)

extracted from Bath's Refuse Ordinance at

<http://api11.team-logic.com/downloadPubFileFile.cfm?i=2014&t=40133&f=43331>

Section 13-91. Purpose.

It is in the best interests of the citizens and visitors to Bath to protect the environment and natural resources of the City of Bath and the State of Maine and the waterbodies within and surrounding the City by prohibiting the use and distribution of polystyrene food service ware and promoting and requiring the use of biodegradable, recyclable, and compostable alternatives. Therefore, the purpose of this Ordinance is to ban the use of polystyrene foam food service ware in order to reduce litter, to minimize the impact on the City's landfill, reduce the necessity to manage litter and the impact of that litter, and reduce the expense to the taxpayers for cleanup and to reduce the environmental impact of the use of polystyrene foam food service ware.

Section 13-92. Authority.

This ordinance is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VIII, Part 2, Section 1, the provisions of Title 30-A M.R.S. Section 3001 et. Seq. as well as the general powers of municipalities to enact police power ordinances.

Section 13-93. Findings.

- Polystyrene foam food service ware is not biodegradable and the litter that it causes does not decompose over time but remains in the natural environment.
- Polystyrene foam food service ware constitutes a significant adverse environmental impact. It creates problems for the City's waste management programs, litters the City's streets, parks, public places, and open spaces, clogs storm drains, culverts, and catch basins, and creates significant expense to remove the litter, while damaging terrestrial and marine habitats.
- National and international organizations have acknowledged the threat of chlorofluorocarbons to the earth's atmosphere and depletion of the ozone layer.
- Products which are degradable, recyclable, and compostable offer environmentally sound alternatives to the non-degradable and non-recyclable products currently used. The use of these products and the banning of polystyrene foam food service ware provides a lesser danger to the natural environment, resulting in less environmental damage and reduced costs.

Section 13-94. Definitions.

As used in this article, the following terms have the following meanings:

Biodegradable means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature, within a reasonably short period of time after customary disposal, and is consistent with the materials accepted at the composting facility used by the City of Bath.

Disposable food service ware means all containers, bowls, plates, trays, cartons, cups, and other items that are designed for one-time use and on, or in, which any restaurant or retail 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 restaurants or retail food vendors.

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."

Restaurant, for purposes of this Article, means any establishment located within the City of Bath that sells prepared foods for consumption on, near, or off its premises by a customer.

Retail food vendor means any person, restaurant, store, shop, sales outlet or other establishment, including without limitation, a grocery store, convenience or variety store or a delicatessen located within the City of Bath which sells prepared foods.

Section 13-95. 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) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.
- (d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

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

Section 13-96. Exemptions.

- (a) The sale and packaging of raw meat and live seafood is exempt from the provisions of this article.
- (b) Retail vendors, food packagers, City departments, City facilities and contractors shall be exempt from the provisions of this article, in a situation deemed by the City manager to be an emergency for the preservation of the public peace, health or safety.
- (c) Retail vendors that receive items, pre-packed in polystyrene foam food or beverage containers, packaged outside of the City of Bath, may re-sell items without repackaging those items.

Section 13- 97. Required biodegradable and compostable disposable food service ware.

- (a) All food vendors using any disposable food service ware will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application. Food vendors are strongly encouraged to provide reusable food service ware in place of disposable food service ware.
- (b) All City facilities will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application.
- (c) City contractors and vendors doing business with the City will use biodegradable food service ware in City facilities or on City projects within the City of Bath, unless they can show an affordable biodegradable or compostable product is not available for a specific application.

Section 13-98. Violations and enforcement.

The City Manager or his/her designee(s) shall have the responsibility for enforcement of this ordinance. If the City Manager determine(s) that a violation of this ordinance has occurred and is the first violation by the establishment within a one-year period, he/she shall issue a written warning notice to the food vendor 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 punishable by fines as follows:

- A fine not exceeding \$250 for the second violation in a one-year period;
- A fine not exceeding \$500 for the third and each subsequent violation in a one-year period. Each day that a violation occurs will be considered a subsequent violation.

Section 13-99. Effective date.

The provisions of this Ordinance shall become effective on Earth Day, April 22, 2018.

Section 13-100. 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.