

ARTICLE 31

THIRTY-FIRST ARTICLE

Submitted by: Solid Waste Advisory Committee, contact Clint Richmond

To see if the Town will amend Article 8.32 of the General By-Laws by deleting Article 8.32 in its entirety and replacing it with the following:

Article 8.32
Sustainable Food Containers and Packaging

Section 1: DEFINITIONS

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment or any other standard that may be developed specifically for an aquatic environment and are clearly labeled with the applicable standard.

CATERER Refers to a food establishment with a catering license issued by the Town that derives at least 50% of its revenues from catering orders.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

DISPOSABLE FOOD SERVICE WARE All food and beverage containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, film wrap, and other items designed for one-time or non-durable uses on or in which any 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 leftover food from partially consumed meals prepared at food establishments.

DIRECTOR refers to the Director of the Department of Public Health or the Director's designee.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This includes, without limitation, restaurants and food trucks.

PACKING MATERIAL Polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, without limitation, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, bottled, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town, regardless of whether it is consumed on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the Brookline curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business facility that sells goods directly to the consumer including but not limited to grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail stores and vendors selling clothing, food, and personal items, and dry cleaning services.

REUSABLE Products that will be used more than once in its same form by a food establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

Section 2. PROHIBITED USE AND DISTRIBUTION OF FOOD WARE AND PACKAGING

(a) Food establishments are prohibited from providing prepared food to customers using polystyrene or polyvinyl chloride food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (a).

(b) Food establishments using any disposable food service ware shall use biodegradable,

compostable, reusable or recyclable food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

(c) Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

Section 3. EXEMPTIONS

(a) Foods prepared or packaged outside the Town are exempt from the provisions of this chapter.

(b) Food establishments and retail establishments will be exempted from the provisions of this Article for specific items or types of disposable food service ware if the Department of Health Director or designee finds that a suitable biodegradable, compostable, reusable, or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship to the establishment.

(c) Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Department of Health Director or designee. The Department of Health Director or designee may waive any specific requirement of this chapter for a period of not more than one year if the establishment seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an “undue hardship” is a situation unique to the food establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that food establishment. An establishment granted an exemption must re-apply prior to the end of the one-year exemption period and demonstrate continued undue hardship if the establishment wishes to have the exemption extended. The Health Department Director’s decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

Section 4. PENALTIES AND ENFORCEMENT

(a) Each Food or Retail establishment as defined above, operating in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Department of Health Director shall issue a warning notice to the Food or Retail establishment for the initial violation.

(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Department of Health Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.

(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.

(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 5. SEVERABILITY

If any provision or section of this By-law shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this by-law, which shall remain in full force and effect.

Section 6. EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(e), which shall take effect on January 1, 2020.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Summary:

Polystyrene foam is a highly unsustainable form of packaging and food service ware. In 1987, this was the first type of plastic to be restricted at the local level. To date, twenty-five Massachusetts communities have successfully banned foam and other forms of polystyrene, including Brookline in 2012. This article proposes to eliminate some polystyrene exemptions in our existing bylaw as has been done in other Massachusetts towns and cities. This article will also extend the bylaw to a broader range of harmful petrochemical plastics. The goal is to make local packaging more sustainable and healthful.

Problems with Petrochemical Plastics

1. The production of single-use plastic containers and packaging made from fossil fuels is not sustainable

Single-use containers are not the highest and best use of non-renewable fossil fuels. Our goal is to reduce unnecessary plastic packaging, as we have done in recent by-laws for bottled water and plastic shopping bags. We can't keep fossil fuels in the ground if fossil fuels are also being used for plastic. While Brookline and other communities have made progress in reducing plastic demand through education and legislation, global plastic production is slated to increase nearly six fold over the coming decades.

2. Solid waste problems

The enormous volume of plastic packaging makes it difficult for consumers to manage. Even if only a small percentage of the volume becomes litter, this causes a large amount of visual blight and animal harm. Litter control costs the town money. Plastic pollution is most acute in the marine environment. Hundreds of marine animal species suffer injury and death. In some cases, the *majority* of the population of a species have been affected (such as for whales).

Plastic suffers from low recycling rates compared to valuable natural materials like paper or aluminum. Plastics are light, but bulky, and so occupy disproportionate space in recycling trucks and landfills. Plastics cannot be sustainably recycled because they are usually turned into other products that are difficult to recycle. Utensils, straws, stirrers and foam are being consumed in large volumes, yet they cannot be recycled curbside. These products cost the town money because trash is more expensive to dispose of than recycling.

All these problems are compounded because plastics do not biodegrade and can persist for 1000 years as litter or in landfills.

3. Plastic containers are bad for human health

Satisfying the increasing demand for the raw materials of plastics is one of the causes of the growth of fracking. Concerns around fracking include the exposure to toxic fracking chemicals, water use and pollution, and the generation of huge volumes of toxic liquid waste.

Plastics such as polystyrene (PS #6), polyethylene terephthalate (PETE #1), and polyvinyl chloride (PVC #3) are much more harmful than others, and create greater potential occupational and environmental hazards (including accidental releases of industrial chemicals). The first two are widely used in food service ware.

PS, PETE and the chemical additives in these plastics can migrate from the container into the food. The industry is not required to list additives to plastics, many of which are toxic. These can include:

- Phthalates - a class of plasticizer added to increase flexibility, which is also a hormone disrupter.
- Benzophenone - an ultraviolet blocker to prevent photo-degradation especially of clear plastics.

In addition, there are:

- impurities and contaminants from the manufacturing process such as antimony (a polymerization catalyst), and
- degradation products (such as acetaldehyde from PETE when exposed to heat or the sun's ultraviolet rays).

Plastics fragment, and can directly enter our human food chain, especially via marine animals.

Sustainable Packaging

The most sustainable packaging uses natural materials such as paper and aluminum. Compostable plastics made from plant sources are another alternative. Such materials are biodegradable, compostable, or recyclable. We also want to encourage the use of reusable solutions. This by-law will transition to more sustainable products.

Why revisit the polystyrene by-law?

The existing 2012 bylaw provides an exemption for polystyrene straws, stirrers and utensils. We want to follow more recent laws such as those in Cambridge, Natick and Wayland that include these items in their scope. This bylaw will also ban plastic straws, stirrers and utensils made of polypropylene (PP #5) because they are not recyclable.

We also want to further limit unsustainable petrochemical plastics that have health risks, PETE and PVC, while still allowing popular, much less toxic polypropylene containers, in addition to natural products. Since 2012, alternatives have become more widely available, and their costs are more competitive. We expect this trend to continue.

Summary

This proposed bylaw is based on successful ordinances in places such as Oakland in sustainable packaging, and San Francisco in the retail sale of polystyrene. Locally, Nantucket, Williamstown and Wellfleet have similar by-laws.

The bylaw takes four steps starting on Jan. 1, 2019:

1. Allows only sustainable food packaging (recyclable, compostable, biodegradable or reusable).
2. Restricts additional plastics that are the most harmful to human health. This is divided into two phases: Phase one bans two of the most harmful starting in 2019: all PVC food service ware; and polystyrene utensils, straws, stirrers (other polystyrene products are covered under the current law). Phase two restricts PETE food service ware over a much longer period effective Jan. 1, 2020.
3. Prohibits the sale of polystyrene *foam* food ware (cups and dinnerware) in Town.
4. Prohibits the sale of polystyrene *foam* packaging in Town such as peanuts and single-use coolers.

This article maintains exemptions for hardship or lack of alternative products.

This bylaw better protects human and environmental health, and demonstrates leadership on this highly visible issue within the state.

May 22, 2018 Annual Town Meeting

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SELECT BOARD'S RECOMMENDATION

ADVISORY COMMITTEE'S RECOMMENDATION

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