

ARTICLE 17. To see if the Town will vote to adopt the following Food Ware and Polystyrene Reduction By-law, and to include this By-law as Section 43, Article X within the Town's General By-law, or take any other action relative thereto:

SECTION 43: FOOD WARE AND POLYSTYRENE REDUCTION BY-LAW

A. Purpose and Intent

Polystyrene food containers and plastic utensils form a significant portion of the solid waste going into our landfills, they are not biodegradable and will remain in our landfills for centuries and that portion of them that makes their way into the oceans will break down into dangerous microplastics which harm and kill marine life and may affect human health.

The purpose of this By-law is to reduce the usage of polystyrene and plastic products by all food-related establishments in the Town of Manchester by-the-Sea.

B. Prohibited Uses and Distribution of Food Service Equipment and Packaging

- (a) Polystyrene, polyvinyl chloride (PVC), or polyethylene terephthalate (PETE) food or beverage containers shall not be used to package or serve food or beverages by food establishments if that packaging takes place on the premises within the Town of Manchester by-the-Sea.
- (b) Food establishments using disposable food service products shall use biodegradable, compostable, reusable or recyclable products.
- (c) Retail establishments are prohibited from selling or distributing polystyrene food service ware to customers.
- (d) Retail establishments are prohibited from selling or distributing polystyrene packing material or products containing it to customers.

C. Exemptions

- (a) Foods prepared or packaged outside the Town are exempt from the provisions of this By-law.
- (b) Food 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 or designee. Any specific requirement of this chapter may be waived 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.

“Undue hardship” is a situation unique to the food establishment where there are no reasonable alternative food service equipment or packaging and compliance with this provision would cause significant economic hardship to that food establishment. Re-application to demonstrate continued undue hardship is required for continued exemptions on an annual basis.

D. Definitions

“ASTM” shall refer the American Society for Testing and Materials whose applicable standards here are: D7081 being the standard for biodegradable plastics in the marine environment; D6400 being the standard for plastics designed for compostability in municipal aerobic composting facilities; D6868 being the standard for aerobic compostability of plastics used as coatings on a compostable substrate.

“Biodegradable” shall mean entirely made of organic materials such as wood, paper, cellulose or bioplastics that meet the ASTM D7081 standard or any other standard that may be developed specifically for an aquatic environment.

“Compostable” shall mean organic or bioplastic materials certified to meet ASTM D6400, D6868 or that conform to other third-party standards, such as Vinçotte, for home composting. Any compostable product must be clearly labeled with the applicable standard.

“Disposable food service products” refers to 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.

“Food establishment” shall mean any operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This includes restaurants, food service and food trucks.

“Packing material” shall mean polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport or storage. This includes, without limitation, packing "peanuts", 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.

“Prepared food” shall mean any food or beverage prepared on the premises, using any cooking or food preparation technique, regardless whether it is consumed on or off the premises.

“Polystyrene” includes foam and rigid polystyrene. Foam polystyrene includes expanded polystyrene (EPS) and extruded polystyrene, such as “Styrofoam” a trademark. EPS is generally used to make cups, bowls, plates, trays and cartons. Rigid or oriented polystyrene is generally used to make clear containers, cups, plates, straws, lids and utensils.

“Retail establishment” shall mean any business that sells goods directly to the consumer including, but not limited to, grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail and clothing stores.

“Reusable” means products that will be used more than once by a food establishment. Reusable includes tableware, flatware, cleanable durable containers, packages, or trays used on-premises or returnable containers such as soft drink bottles and milk containers that are designed to be returned to the distributor and supplier for reuse as the same food or beverage container.

E. Administration and Enforcement

The Police Department will be the enforcement agent for this By-law. The Department of Health is authorized to issue warnings, notices of violation and penalties.

This By-law may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to GL. C.40 §21D. Fines for civil penalties shall be issued as follows:

- 1) If a violation has occurred, the Department of Health shall issue a warning notice for the first violation.
- 2) If an additional violation has occurred, the Department of Health shall issue a notice of violation and shall impose a penalty against the establishment.
 - a) The penalty after the issuance of a notice of violation shall be \$50 for the first offense;
 - b) The penalty for a) subsequent violations shall be \$100; and shall be imposed for every seven-day period that the violation continues to occur.
 - c) No more than one penalty shall be imposed within a 7 day period;

F. Severability

If any provision or section of this 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 law, which shall remain in full force and effect.

G. Enactment

This By-law shall go into effect six months after the date of passage at Town Meeting.

Per Citizen's Petition