

City of Pittsfield

Sec. 8-2.2 Ban on use of styrofoam

[Ord. No. 1162, § I, 10-13-2015]

- a) Purpose: This section is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the City of Pittsfield.
- b) Findings: The elimination of expanded polystyrene food containers is in the best interests of the health and welfare of City inhabitants because, in 2011, the U.S. Department of Health and Human Services, through its National Toxicology Program, has determined that styrene is reasonably anticipated to be a human carcinogen, which can leach into food and beverages via polystyrene containers.
- c) Definitions:

**BIODEGRADABLE FOOD SERVICE CONTAINER**

Within three years having the ability to one-hundred-percent completely break down, or within three years decompose back into the natural environment without causing harm.

**DISPOSABLE FOOD SERVICE CONTAINER**

Single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable utensils, nor does it include single-use disposable packaging for unprepared foods. The Board of Health shall have final say as to what is or is not a disposable food service container.

**EXPANDED POLYSTYRENE (EPS)**

Polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

**FOOD ESTABLISHMENT**

An 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 section. The Board of Health shall determine what is or is not a food establishment.

**POLYSTYRENE**

Expanded polystyrene which is a thermoplastic petrochemical material 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**

Any food or beverage prepared for consumption on the food establishment's premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

### **RECYCLABLE FOOD SERVICE CONTAINER**

A food service container completely capable of reuse as a food service container 10 or more times, or completely capable of being used as a high quality recycle, wherein the materials of the food service container may be completely reclaimed and used in new food service containers at least 10 times.

#### d) Prohibition:

- i. A food establishment is prohibited from dispensing prepared food to customers in disposable food services containers that are made in whole or part from expanded polystyrene. This would eliminate any requirement that the product also be biodegradable and recyclable.

#### e) Deferments:

- i. Upon written application, the Board of Health, after a public hearing, may defer application of this section for a food establishment for a one-year period, upon a showing by the food establishment that the conditions of this section would cause undue hardship. For purposes of this section, 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.
- ii. A food establishment granted a deferment by the City must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.
- iii. A deferment granted in accordance with this section may be extended for no more than one additional one-year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.
- iv. A deferment application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require the applicant to provide

additional information to permit it to determine facts regarding the deferment application.

- v. Deferment decisions are effective immediately and final.

f) Enforcement:

- i. An agent of the Board of Health shall inquire on an annual basis regarding any food establishment's compliance with this section as a condition for renewal of the establishment's food service permit.
- ii. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this section.
- iii. An agent of the Board of Health 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 chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.
- iv. An agent of the Board of Health may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means. [v.](#)
- v. Any member of the public who observes a potential violation of this section shall be able to file a complaint with the Board of Health who shall investigate whether there is a violation of this section.
- vi. Penalties and fines for violations of this section may be enforced as follows: This section shall be enforced by the Board of Health or its designee. Whoever violates any provision of this section may be penalized by a noncriminal disposition process as provided in MGL c.40, § 21D and the City's noncriminal disposition ordinance. If noncriminal disposition is elected, then any person who violates any provision of this section shall be subject to the following penalties:
  - a. First offense: a written warning to the food establishment which will specify the violation.
  - b. Second offense: a fine of \$25.
  - c. Third offense: a fine of \$50.

- d. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- e. Whoever violates any provision of this section may be penalized by virtue of a civil complaint brought in the district court.