

Arlington Polystyrene Bylaw, May 2019

ARTICLE 29

BYLAW AMENDMENT/REGULATION OF POLYSTYRENE

VOTED: That Title VIII (Public Health and Safety) be and hereby is amended by adding a new “Article 10: Polystyrene Reduction” to read as follows:

Section 1. Purpose and Intent

The use and disposal of polystyrene has significant impacts on our Town and our environment, including:

- A. Harm to aquatic life when ingested;
- B. Pollution of waterways;
- C. Human health risks from potential exposure to chemicals leaching from polystyrene food containers and consumption of aquatic wildlife that contains polystyrene microplastics;
- D. Limited recycling options for polystyrene containers and other polystyrene products.

With the goal of protecting the health of residents and our natural resources, consistent with the Town Goals adopted by Town Meeting in 1993, and given that inexpensive, safe alternatives to polystyrene are easily obtained, the Town will phase out the use of certain polystyrene plastics by January 1, 2020.

Section 2. Definitions

- A. “Department” shall mean the Arlington Department of Health and Human Services.
- B. “Director” shall mean the Director of Health and Human Services.
- C. “Food Establishments” shall mean any operations that store, prepare, package, serve, vend or otherwise provide food for human consumption, including, but not

limited to, restaurants, mobile food vendors, caterers, residential kitchen operators, schools, farmers markets, and public venues. 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 the purpose of this bylaw.

D. “Polystyrene” shall mean and includes:

(1) blown polystyrene and expanded and extruded foams (sometimes called “Styrofoam,” a Dow Chemical Co. trademarked form of insulation) also referred to as expanded polystyrene (EPS), which is herein referenced in this bylaw as "Foam Polystyrene." Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons; and
(2) clear or solid polystyrene, which is also known as “oriented,” which is herein referenced in this bylaw as “Rigid Polystyrene.” Rigid Polystyrene is generally used to make clear clamshell containers, and clear or colored cups, plates, straws, lids and utensils.

Polystyrene may be labeled with the recycling number “6” or “PS 6”.

E. “Polystyrene Disposable Food Services Containers” shall mean single-use disposable products used for serving, consuming, or transporting food or beverages, including, but not limited to, take-out foods or leftovers from partially consumed meals prepared by a restaurant or other food establishment. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, and cutlery. It shall also include single-use disposable packaging for uncooked foods prepared on the premises, as well as disposable catering trays.

F. “Public Venues” shall mean operations including, but not limited to, meeting halls, churches, Town offices, the Senior Center, Recreation Department facilities, libraries, and public schools operating in Arlington.

G. “Retail Establishments” shall mean any commercial business facility, whether for-profit or not-for-profit, that sells goods directly to consumers including, but not limited to, grocery stores, pharmacies, liquor stores, convenience stores, theaters, and all other retail stores.

Section 3. Use Regulations

- A. Food Establishments: Effective January 1, 2020, food establishments shall be prohibited from using, distributing, or selling polystyrene disposable food service containers made from foam or rigid polystyrene, or polystyrene cutlery or other polystyrene single use disposable products within the Town of Arlington.
- B. Retail Establishments: Effective January 1, 2020, retail establishments shall be prohibited from selling or distributing polystyrene disposable food service containers made from foam polystyrene within the Town of Arlington.
- C. Exemptions: This bylaw shall not apply to:

1. Polystyrene foam packaging peanuts;
2. Prepackaged meat and produce trays, egg cartons, and other food or beverage products bought from or packaged by any supplier located outside of Arlington;
or
3. Polystyrene foam freezer chests.

Section 4. Penalties and Enforcement

A. Each food establishment or retail establishment, as defined in Section 2, located in the Town shall comply with this bylaw.

1. If it is determined that a violation has occurred, the Director, or his or her designee in the Department, shall first issue a "warning notice" to the food establishment or retail establishment for a first time violation.
2. If after 14 days from receipt of the warning notice, the food establishment or retail establishment continues to violate this bylaw or commits a second violation, the Director shall issue a notice of violation and shall impose a penalty against the food establishment or retail establishment.
3. The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - (i) \$50 for the first offense;
 - (ii) \$100 for the second offense;
 - (iii) \$150 for the third and all subsequent offenses.
4. No more than one penalty shall be imposed upon a food establishment or retail establishment within a seven calendar day period.
5. A food establishment or retail establishment shall have 15 calendar days after the date that a notice of violation is issued to pay the penalty or request a hearing in writing to the Director.

B. The Director may promulgate additional guidelines and regulations necessary for the effective enforcement of this bylaw, consistent with the foregoing.

Section 5. Waivers

In the event that compliance with the effective date of this bylaw is not feasible for a food establishment or retail establishment because of either unavailability of alternative containers or products or economic hardship, the Director may grant a waiver of not more than six months upon application of the owner or owner's representative. The Director may provide one additional six-month waiver upon showing of continued infeasibility or hardship, as set forth above.

Section 6. Severability

The provisions of this bylaw are severable; and if any of the provisions of this bylaw shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

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COMMENT: The Select Board urges Town Meeting to vote in support of this measure to join communities such as Andover, Brookline, Cambridge, Concord, and Wayland in prohibiting the use of a limited class of polystyrene products at food and retail establishments – specifically a limited type of plastic food service containers, cutlery, and packaging materials. These products pose risks to human health and the environment, are difficult to recycle, and have cost-effective, readily available alternatives.

The Board emphasizes that only plastics bearing recycling number 6 (primarily single-use plastics) would be covered by this prohibition, and a variety of exceptions are woven into the bylaw such as exceptions for polystyrene coolers and food products which come to grocery stores and other retailers in pre-packaged in polystyrene containers. Furthermore, Arlington residents will be able to purchase polystyrene products online or outside of Arlington, and the cost difference for products purchased within Arlington should have minimal impact on consumers.

Finally, this well-researched proposal is modeled after a successful plastic bag reduction bylaw passed by Town Meeting in 2017. As such, it includes advanced notice to retailers and establishments, graduated penalties, and a temporary waiver system for appropriate businesses.