

ARTICLE 24: POLYSTYRENE FOOD CONTAINER BYLAW

Sponsored by: Petitioners

Estimated Cost: \$1,000

To determine whether the Town will vote to amend the Town Bylaws by adding a Bylaw for the reduction of polystyrene use as presented below, and to determine whether the Town will vote to appropriate a sum of money to be expended by the Board of Health for compliance and enforcement of the bylaw; and determine whether such appropriation shall be provided by taxation, by transfer from unappropriated funds, by transfer of funds already appropriated for another purpose, by borrowing under Massachusetts General Laws Chapter 44 or other enabling authority, or otherwise.

Section 1. Purpose and Intent

Polystyrene contains dangerous substances which when heated release toxic chemicals that may be carcinogenic. Eliminating polystyrene food and beverage containers is in the best interest of the health and welfare of the inhabitants of the Town of Wayland. Expanded polystyrene food containers form a significant portion of the solid waste going into our landfills. Polystyrene is not biodegradable; once buried in a landfill it will remain there for centuries.

Section 2. Definitions

1. *“Disposable Food Service Container”* means 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 includes single-use disposable items such as straws, cup lids, or utensils.
2. *“Food Establishment”* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. Food Establishment shall include any fixed or mobile place, structure or vehicle whether permanent, transient, or temporary, private, public or non-profit, routinely serving the public; or any other eating and drinking establishment or place in which food or drink is prepared for sale or for service to the public on the premises or elsewhere. School cafeterias are included in this ordinance.
3. *“Polystyrene”* means and includes blown polystyrene and expanded and extruded foams (sometimes called *“Styrofoam,”* a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS), 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, form molding, and extrusion-blow molding (extruded foam polystyrene); and in this bylaw is referenced as *“Foam Polystyrene.”* Foam Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. The term also means and includes clear or solid polystyrene which is also known as *“oriented,”* and referenced in this bylaw as *“Rigid Polystyrene.”* *“Rigid Polystyrene”* is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.
4. *“Prepared Food”* means any food or beverage prepared on the Food Establishment’s premises for consumption on the premises or elsewhere, 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.
5. BOH means the Board of Health or the Board of Health’s designee, which may be the Health Department.

6. This bylaw shall be known as the *Polystyrene Food Container Bylaw*.

Section 3. Use Regulations

Except as provided herein, Food Establishments are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Polystyrene.

Section 4. Effective Date

This bylaw shall take effect six (6) months following approval of the bylaw by the Attorney General or January 1, 2018, whichever is later. Upon application of the owner or the owner's representative, the Board of Health may exempt a food establishment from the requirements of this section for a period of up to six (6) months upon a finding by the Board of Health that (1) the requirements of this section would cause undue hardship; or (2) a food establishment requires additional time in order to draw down an existing inventory of polystyrene disposable food service containers.

Section 5. Enforcement

5.1 Enforcement of this bylaw shall be the responsibility of the Board of Health. The Board of Health shall determine the monitoring process to be followed, which may be limited to responding to citizen reports, and/or incorporating inspections into existing food establishment inspections.

5.2 Any food establishment in violation of this bylaw shall be subject to a non-criminal disposition fine as specified in Section 2-2 of the bylaws, Noncriminal disposition of violations; enforcement. Any such fines shall be paid to the Town of Wayland.

5.3 Section 2-2 is amended to add a new section as follows:

Violation of the Polystyrene Food Container Bylaw.

- (1) Penalty: 1st offense – Warning;
2nd offense - \$50 per day; 3rd and each subsequent offense - \$100 per day.
- (2) Enforcing persons: BOH

Section 6. Severability

If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

PETITIONERS COMMENTS: Banning polystyrene containers is a step toward sustainable packaging that is reusable, recyclable, or biodegradable and manufactured from non-toxic natural materials. Polystyrene is the only plastic used in food packaging that is based on a carcinogen. Polystyrene food items are a litter problem. The foam form is not recycled and often blows away and is then carried into lakes and waterways. At least 267 marine species worldwide are affected by polystyrene litter. This bylaw causes national chain establishments to comply and provides a “level playing field” for all Wayland businesses. 20 Massachusetts municipalities have a polystyrene ban. This bylaw does not create a financial burden to the town. The scope is limited and the BoH can rely on citizen-based monitoring so inspections are not needed. Once a food establishment converts to alternative containers there is little probability of going against the law. For our health and environment vote YES.

FINANCE COMMITTEE COMMENTS: This article proposes a new town bylaw to prohibit food establishments in Wayland from dispensing prepared foods in disposable containers made from

polystyrene. The prohibition would not apply to raw uncooked meat, raw fish or raw eggs. If passed, this would take effect six months after the approval by the Attorney General or on January 1, 2018 whichever is later. The proposed bylaw includes provisions for the Board of Health to exempt an establishment for six months if the requirements would cause hardship or to allow the establishment time to use an existing inventory of polystyrene containers.

The Wayland Public Schools Food Service Department has eliminated all polystyrene products from the school lunch program. The new High School was opened without the use of polystyrene products and it was eliminated from all other schools beginning with the FY16 school year beginning September of 2015. The cost to phase out polystyrene was paid for by increasing school lunch prices.

Board of Health voted 4-0 in favor of the following statement on the topic at their January 30, 2017 meeting: *We agree in principle that it is desirable to decrease the use of Polystyrene products in Wayland. However, we do not see this as a public health issue and furthermore, we do not currently have the resources to enforce this bylaw. We do not think it is fiscally responsible to add staff as other towns have had to do to enforce the bylaw.*

Conservation Commission voted 5-0 to support, January 26, 2017.

The Board of Selectmen took no position on the article.

ARGUMENTS IN FAVOR: Proponents believe that banning polystyrene containers will promote the use and future development of sustainable packaging options.

Proponents note that major corporations have stopped using polystyrene including McDonald's. Chain establishments are already familiar as are other cities and towns including large municipalities like Cambridge and Somerville.

Proponents argue that a mandatory approach is necessary as there are limitations that make a voluntary ban non-viable.

Proponents also cite environmental, health and potential economic benefits from banning polystyrene single use food and beverage items.

Cheryl Judd, head of food service for the Wayland Schools, has eliminated the use of Styrofoam in the school lunch program in Wayland.

ARGUMENTS OPPOSED: There will be a cost to the Town for implementation and enforcement.

A campaign aimed at voluntary compliance might be more appropriate than a bylaw.

The ban should be at the state level, not the town level.

RECOMMENDATION: The Finance Committee does not recommend approval. (Vote 0-4-2)

CONSISTENCY WITH LAW: The proposed bylaw amendment is not repugnant to federal or Massachusetts law.

QUANTUM OF VOTE: Majority vote per Massachusetts General Laws Chapter 40, Section 21.

For more information about this article, contact lead petitioner Paul Dale at paulbdale@gmail.com or (617) 794-0851

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