

# Model Ordinance Banning Polystyrene Foodware and Packing Material<sup>1</sup>

## AN ORDINANCE of the [insert name of jurisdiction]

### AMENDING [if ordinance is amended prior legislation, insert reference]

#### Section 1. Findings and Purpose

WHEREAS, the [jurisdiction] has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance, classified by the National Toxicology Program (NTP) as “reasonably anticipated to be a human carcinogen” and also recognized by the NTP as a potential food and beverage contaminant that may “leach from polystyrene containers used for food products”; and

WHEREAS, polystyrene is made from fossil fuels, a non-renewable resource; and

WHEREAS, polystyrene manufacture, use, and disposal requires substantial energy consumption and contributes to greenhouse gases and other adverse environmental effects; and

WHEREAS, polystyrene is not biodegradable or compostable, and is generally not recyclable; and

WHEREAS, polystyrene is a common environmental pollutant that fragments into smaller pieces that harm or kill marine life and wildlife when they ingest them;

WHEREAS, the U.S. Environmental Protection Agency states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy"; and

WHEREAS, polystyrene is used as food service ware by food establishments and packing material by retail establishments operating in the [jurisdiction]; and

WHEREAS, disposable food service ware constitutes a portion of the litter in [name of jurisdiction]'s streets, parks and public places, which increases [jurisdiction] costs; and

WHEREAS, affordable and effective ways to reduce the negative environmental impacts of polystyrene products are available for most retail applications; and

WHEREAS, over 100 municipalities throughout the United States, Canada, Europe, and Asia have banned polystyrene food service ware,

NOW THEREFORE, the [relevant legislative body] hereby enacts this ordinance to prohibit the use and distribution of foam and rigid polystyrene in food service ware and packaging material.

#### Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

DISPOSABLE FOOD SERVICE WARE – All containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, 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

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<sup>1</sup> Based on ordinances in Cambridge and Williamstown, MA. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at food establishments. This definition includes single-use disposable packaging for unprepared foods.

**FOOD ESTABLISHMENT** – An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This definition includes 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.

**RETAIL ESTABLISHMENT** – Any commercial 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.

**POLYSTYRENE** – The term 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 ordinance 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 ordinance as "Rigid Polystyrene." "Rigid Polystyrene" is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.

**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.

**PREPARED FOOD** – Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food establishment's premises within the [name of jurisdiction]. Prepared food may be eaten either on or off the premises, also known as "takeout food."

**REUSABLE** – Materials 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 also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

### Section 3. Regulated Conduct<sup>2</sup>

- a) Food establishments are prohibited from providing prepared food to customers in foam polystyrene or rigid polystyrene food service ware. 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.
- b) Retail establishments are prohibited from selling or distributing foam polystyrene or rigid polystyrene food service ware to customers.
- c) Food establishments and retail establishments are prohibited from dispensing, selling, or offering for sale polystyrene packing material in the [name of jurisdiction].

### Section 4. Exemptions<sup>3</sup>

- a) Foods prepared or packaged outside the [name of jurisdiction] are exempt from the provisions of this ordinance. Purveyors of food prepared or packaged outside the [name of jurisdiction] are encouraged to follow the provisions of this ordinance.
- b) Food establishments and retail establishments will be exempted from the provisions of this ordinance for specific items or types of disposable food service ware if the [relevant department, ex. Board of Health] finds that a suitable alternative does not exist for a specific application and/or that imposing the requirements of this ordinance on that item or type of disposable food service ware would cause undue hardship.
- c) Any food establishment or retail establishment may seek an exemption by submitting a written exemption request to [relevant department], and shall allow the [relevant department] access to all information supporting its application. A written exemption request shall include all information and documentation necessary for the [relevant department] to make a finding of undue hardship. The [relevant department] may require the applicant to provide additional information in order to make a determination regarding the exemption application.
- d) The [relevant department] may exempt a food establishment or retail establishment from the requirements of this ordinance for a period of up to six (6) months, if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. The [relevant department] may approve one (1) additional 6-month period upon the showing of a continued undue hardship. A person granted an exemption must re-apply prior to the end of the first 6-month exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. An “undue hardship” shall only be found in:
  - 1. Circumstances or situations unique to the particular food establishment or retail establishment such that there are no reasonable alternatives to polystyrene disposable food service ware and compliance with this provision would cause significant economic hardship to that food establishment, or

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<sup>2</sup> Some communities also ban polystyrene pool or beach toys; dock floats, mooring buoys, or anchor or navigation markers; made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

<sup>3</sup> Some communities also allow the following exemption:  
“Coolers and ice chests that are intended for reuse are exempt from the provisions of this ordinance.”

2. Circumstances or situations unique to the particular food establishment or retail establishment such that compliance with the requirements of this ordinance would deprive a person of a legally protected right, or

3. Circumstances where a particular food establishment or retail establishment requires additional time to draw down an existing inventory of polystyrene disposable food service ware. Any food establishment or retail establishment receiving an exemption shall file with the [relevant department] monthly reports on inventory reduction and remaining stocks.

e) Exemption decisions are effective immediately. The [relevant department]'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. The [relevant department] may approve the exemption request, in whole or in part, with or without conditions. The [relevant department] by regulation, may establish a fee for exemption requests.

## SECTION 5. Enforcement and Penalties

a) The [relevant department] shall have the authority to enforce this ordinance by:

- 1) Inspection and investigation;
- 2) The issuance of violation notices and administrative orders; and/or
- 3) Civil court actions

b) Whoever, himself or by his servant or agent or as the servant or agent of any other person or firm or corporation, violates any of the provisions of this ordinance may be penalized by a non-criminal disposition process as provided in [insert reference to pertinent code]. Each day of violation, after written notice, is a separate violation.

c) The following penalties shall apply:

- 1) First offense: Written warning
- 2) Second offense: \$100
- 3) Third offense: \$200
- 4) Fourth and subsequent offense: \$500

d) The Board of Health may suspend, revoke or deny any license or permit for violations of this ordinance.

## SECTION 6. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

## SECTION 7. Effective Date

This ordinance shall take effect on [Month date, year].