

Model Ordinance Banning Polystyrene (PS), Polyvinyl Chloride (PVC), and Polyethylene Terephthalate (PETE) Foodware¹

**AN ORDINANCE of the [insert name of jurisdiction]
AMENDING [if ordinance is amended prior legislation, insert reference]**

Section 1. Definitions

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

BIODEGRADABLE Entirely made of organic materials such as wood, paper, bagasse or cellulose; or bioplastics that meet the American Society for Testing and Materials (ASTM) D7081 standard for Biodegradable Plastics in the Marine Environment or any other standard that may be developed specifically for an aquatic environment and are clearly labeled with the applicable standard.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

DISPOSABLE FOOD SERVICE WARE All 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.

DIRECTOR refers to the Director of [Inspectional Services, or the Department of Public Health, etc.] or the Director's designee.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This includes, without limitation, restaurants and food trucks.

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.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

¹ This ordinance was drafted by the Massachusetts Chapter of the Sierra Club for Brookline, MA.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, bottled, frozen, squeezed or otherwise prepared on the food establishment's premises within the [jurisdiction], regardless of whether it is consumed on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the [name of jurisdiction] curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business 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.

REUSABLE Products that will be used more than once in its same form by a food establishment. Reusable also includes 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.

Section 2. Prohibited Use and Distribution of Food Ware and Packaging

- (a) Food establishments are prohibited from providing prepared food to customers using polystyrene, polyvinyl chloride or polyethylene terephthalate food service ware.
- (b) Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable 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.
- (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 foam packing material to customers.

Section 3. Exemptions

- (a) Foods prepared or packaged outside the [jurisdiction] are exempt from the provisions of this chapter.
- (b) Food establishments and retail establishments will be exempted from the provisions of this Article for specific items or types of disposable food service ware if the 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 Director or designee. The Director or designee may waive any specific requirement of this chapter 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. For purposes of this chapter, an "undue hardship" is a situation unique to the food establishment where there are no reasonable alternatives to the use of disposable food service ware and compliance with this provision would cause significant economic hardship to that food establishment. An establishment

granted an exemption must re-apply prior to the end of the one-year exemption period and demonstrate continued undue hardship if the establishment wishes to have the exemption extended. The Director'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.

Section 4. Penalties and Enforcement

(a) Each Food or Retail establishment as defined above, operating in the [name of jurisdiction] shall comply with this law.

(1) If it is determined that a violation has occurred the Director shall issue a warning notice to the Food or Retail establishment for the initial violation.

(2) If an additional violation of this law has occurred within one year after a warning notice has been issued for an initial violation, the Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the [name of jurisdiction] District Court.

(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.

(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 5. 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.

Section 6. Effective Date

The provisions of this Law shall take effect on [Month date, year].