

- (1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.
- (2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §2ID. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(g) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable.

(Ord. No. A-56, 01-20-15; Ord. No. B-33, 07-08-19)

Sec. 12-72 Sustainable Food Containers and Packaging.

(a) **Short title.** This section may be cited as the “Sustainable Food Containers and Packaging Ordinance” of the City of Newton.

(b) Declaration of findings and policy – Scope.

The city council hereby finds that the prohibition on the use of foam polystyrene food and packaging containers and plastic stirrers by food service establishments and the sale or use of these products by any business in the City of Newton is a public purpose that protects the public health, welfare and environment, advances solid waste reduction and protects waterways.

(c) Definitions.

The following words shall, unless the context clearly requires otherwise, have the following meanings:

“Biodegradable” means that which is 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.

“Commissioner” means the commissioner of health and human services of the City of Newton.

“Compostable” means 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 Vincotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

“Department” means the Department of Health and Human Services of the City of Newton.

“Disposable Food Container” means all food and beverage containers, bowls, plates, trays, cartons, cups, stirrers, and other items except straws, 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, food service ware for takeout foods and leftover food from partially consumed meals prepared at food establishments.

“Foam polystyrene” means a non-biodegradable petrochemical thermoplastic made from aerated forms of polystyrene and includes several methods of manufacture. Expanded polystyrene (EPS) or extruded polystyrene (XPS) are forms of polystyrene. “Styrofoam” is a Dow Chemical Co. trademarked form of extruded polystyrene and is commonly used to refer to foam polystyrene. These are generally used to make insulated cups, bowls, trays, clamshell containers, meat trays, foam packing materials and egg cartons. The products are sometimes recognized by a #6 resin code on the bottom.

“Food Establishment” means a business establishment that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including but not limited to any establishment requiring a permit to operate in accordance with the state food code.

“Packing material” means 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” means any food or beverage, whether packaged or prepared for consumption on or off the food provider’s premises, using any cooking or food preparation technique or provided for further food preparation.

“Recycle” refers to material that can be sorted, cleansed, and reconstituted using Newton’s 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” means a business establishment engaged in the retail sale of goods directly to consumers.

“Reusable” refers to products 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.

“Rigid polystyrene” means a non-biodegradable petrochemical thermoplastic made from a non-aerated form of polystyrene. Also known as “oriented polystyrene,” the material is generally clear or solid in appearance and is used to make clear clamshell containers, cups, plates, straws, lids and utensils. The products are sometimes recognized by a #6 resin code on the bottom.

(d) Prohibited use and distribution of food ware and packaging.

- (1) Food establishments are prohibited from dispensing prepared food or beverages to any person in disposable food containers made from foam polystyrene.
- (2) Food establishments are prohibited from dispensing plastic stirrers.
- (3) 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 the premises. Food establishments using any disposable food service ware and stirrers are strongly encouraged to use biodegradable, compostable, reusable or recyclable food service ware and stirrers.
- (4) Retail establishments are prohibited from selling or distributing disposable food containers made from foam polystyrene to customers.

(5) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) **Effective date.** This section shall take effect on January 1, 2020.

(f) **Enforcement.**

(1) Fine. Any food or retail establishments which violates any provision of this section or any regulation established by the Commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation continues shall constitute a separate offense.

(2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, Sec. 21D.

(3) This section shall be enforced by the commissioner of health and human services, or his or her designee.

(g) **Severability.**

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable. (Ord. No. B-28, 04-16-19)