

#19



CITY OF SALEM

In City Council January 13, 2022

ORDERED: That the Committee on Public Health, Safety and Environment co-posted with the Committee of the Whole meet to review and discuss the attached ordinance relative to an ordinance establishing regulations for sustainable food ware and packaging

In City Council January 13, 2022
Adopted

ATTEST:

**ILENE SIMONS
CITY CLERK**

AN ORDINANCE ESTABLISHING REGULATIONS FOR SUSTAINABLE
FOOD WARE AND PACKAGING

Section 1. The Revised Ordinances of the City of Salem are hereby amended by inserting the following new section.

Chapter 14 Business Licenses and Fees.

(New Article VIII) Sustainable Food Ware and Packaging Regulations

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

1. 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.
2. 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 Vinqotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.
3. DISPOSABLE FOOD SERVICE WARE All food and beverage containers, bowls, plates, trays, cartons, cups, lids, 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.
4. BOH refers to the Health Agent or the Board of Health designee.
5. 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.

6. **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.
7. **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 oriented polystyrene is generally used to make clear clamshell containers, cups, plates, lids, and utensils.
8. **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 City, regardless of whether it is consumed on or off the premises.
9. **RECYCLABLE** Material that can be sorted, cleansed, and reconstituted using the City'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.
10. **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.
11. **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.

B. PROHIBITED USE AND DISTRIBUTION OF FOOD WARE AND PACKAGING

1. Food establishments are prohibited from providing prepared food to customers using polystyrene, polyvinyl chloride or polyethylene terephthalate food service ware.
2. 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.
3. Retail establishments are prohibited from selling or distributing polystyrene food service ware to customers.
4. Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

C. EXEMPTIONS

1. Foods prepared or packaged outside the City are exempt from the provisions of this chapter.
2. 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 BOH 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.
3. Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the BOH or designee. The Health Agent 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 Health Agent'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.
4. Straws are expressly allowed under this section and shall be exempt from the regulations contained herein. (ADA)

D. PENALTIES AND ENFORCEMENT

1. Each Food or Retail establishment as defined above, operating in the City of Salem shall comply with this law.
2. If it is determined that a violation has occurred, the BOH shall issue a warning notice to the Food or Retail establishment for the initial violation.
3. If an additional violation of this law has occurred within one year after a warning notice has been issued for an initial violation, the BOH shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.
4. 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 and all subsequent offenses.
 - iii. Payment of such fines may be enforced through civil action in Salem District Court or Suffolk Superior Court.

5. No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.
6. 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.

E. SEVERABILITY

If any provision or section of this ordinance 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.

F. EFFECTIVE DATE

The provisions of this ordinance shall take effect on January 1st, 2023.