

CITY OF NEWTON
IN CITY COUNCIL

_____, 2023

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton Massachusetts, 2017, as amended, be and hereby are further amended as follows:

Amend section 12-72 to ARTICLE IX. of Chapter 12 by replacing it in its entirety with the following

Section 12-72 Sustainable Food Service Ware, Packaging, and Single Use Items

- (a) Short Title. This section may be cited as the “Sustainable Food Service Ware, Packaging, and Single Use Ordinance” of the City of Newton.
- (b) Purpose: The purpose of this ordinance is to reduce the overall environmental impact of the City of Newton, its residents, and its businesses. Single use plastic has a significant impact on the environment through its carbon footprint, waste management, pollution, and more. The provisions of this ordinance will reduce the amount of single use plastic used throughout the City.
- (c) Declaration of findings and policy- Scope

The city council hereby finds that the prohibition of certain single use plastic items, including but not limited to: i) foam polystyrene and black plastic food and packaging containers; ii) plastic stirrers; iii) single use plastic utensils; iv) single use plastic water bottles, and more, by food service and retail 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, protects waterways, and reduces the carbon footprint of the City’s business and residents.

- (d) Definitions

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

“Black plastic” means black plastic containers typically used by food service establishments for takeout food orders and for consumers to take home leftover food from dining in.

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

“Compostable” means a product comprised of i) wood or fiber-based substrate only; or ii) bioplastic or other organic materials that break down in a compost pile within a set amount of time into safe material, and that is certified as such by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or OK Compost/TUV. Any bioplastic product must be clearly labeled with the applicable standard on the product. Products marked “compostable” or “biodegradable” that are not certified and marked as such may contain unsafe and toxic materials such as PFAS.

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

“Disposable Food Service Ware” means all food and beverage containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, chopsticks, stirrers, 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, food service ware for takeout foods and leftover food from partially consumed meals prepared at food establishments by dine-in customers.

“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 identified 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 item 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. Such materials must be accepted and recycled by the Materials Recovery Facility that receives Newton's residential curbside recycling. "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 multiple times in their same form by a food establishment. Reusable food service ware includes tableware, flatware, food or beverage containers, packages and trays. Such products are intended to be washed multiple times in a commercial dishwasher and to retain their form and function over multiple usage and washing cycles.

"Single use plastic water bottle" means any single serving container, whether sold individually or in bulk, containing non-carbonated, unflavored drinking water with a volume of one liter or less, that is made in whole or in part of plastic material, excluding the cap. This includes boxed water which is lined with plastic and is not accepted by curbside recycling in the City of Newton.

- (e) Prohibited use and distribution of certain containers, food service ware, packaging, and single use items.
1. Food establishments are prohibited from dispensing prepared food or beverages to any person in disposable food service ware that is not reusable, compostable, or recyclable. This includes a prohibition on foam polystyrene and black plastic takeout containers.
 2. Food establishments are prohibited from dispensing plastic stirrers.
 3. Food establishments may not automatically place disposable food service ware such as utensils (forks, knives, spoons, chopsticks) or straws in takeout orders, whether orders are placed online, via phone, or in person. Such utensils and straws may be provided only upon the request of the consumer either directly or in response to an inquiry by the food establishment. Food establishments that separate organics (including compostable food service ware) and have contracted for its pickup may have dispensers for customer selection of compostable utensils and straws. In all cases, such utensils or straws must be compostable or reusable, and may not be prepackaged in sets (not including chopsticks).
 4. Food establishments may not automatically place single use condiment packages in takeout orders, whether orders are placed online, via phone, or in person. Condiment packages may be provided only upon the request of the consumer either directly or in response to an inquiry by the food establishment. Notwithstanding the foregoing, food establishments may offer consumers condiments packaged on-site, such as sauces, in containers that are reusable, compostable, or recyclable.
 5. The sale and distribution of single use plastic water bottles is prohibited in the City of Newton.

6. The sale or distribution of the following single use plastic items, including items that contain single use plastic, is prohibited in Newton: plastic balloon sticks, plastic floss sticks, plastic ear swabs, and cosmetics containing plastic glitter.
7. The intentional release of helium filled balloons is prohibited in the City of Newton.
8. Retail establishments are prohibited from selling or distributing disposable food service ware that is not reusable, compostable, or recyclable to consumers, including those made from foam polystyrene or black plastic.
9. Retail establishments are prohibited from selling or distributing packing materials that are not reusable, compostable, or recyclable to consumers, including those made from polystyrene foam.
10. Food establishments shall allow customers to bring their own clean takeout containers to fill themselves in order to take home leftover food from dine-in.
11. No later than January 1, 2024, food establishments shall utilize only reusable dishware and utensils for dine-in customers. Notwithstanding the foregoing, small establishments without the means to wash reusable dishware may request a waiver from the commissioner of health.
12. No later than January 1, 2024, food establishments must offer an option for customers to have takeout food in reusable containers. Notwithstanding the foregoing, if there is no viable option for the sourcing and provision of reusable containers, the commissioner of health may extend this requirement annually by one year until such viable options are available.

(f) Effective date. This section shall take effect on July 1, 2023, unless a later date is specified above.

(g) 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. Any retail or food establishment may contest whether specific items are allowable under this Section by providing written documentation that the item is recyclable from both their city-permitted waste/recycling hauler and associated materials recovery facility (MRF), or compostable from their commercial organics hauler and associated compost endsite.
4. Items (e) 1-4, 8-12 in this section shall be enforced by the commissioner of health and human services, or their designee.

- 5. Items (e) 5-7 in this section shall be enforced by health and human services unless determined to be the responsibility of another City department.
- 6. Specific items in this section may be put on temporary hold by the Mayor of the City or commissioner of health as needed during times of emergency such as pandemics.

(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.

AND

In Sec.17-23. Enforcing persons and revised ordinances subject to civil fine. Amend paragraph (b), HEALTH AND HUMAN SERVICES DEPARTMENT, by adding after CITY ORDINANCES, Any offense, the following:

PENALTY

Section 12-72, Single Use Plastic Prohibition Ordinance

() First offense	Warning
() Second offense	\$100.00
() Third offense	\$200.00
() Fourth or subsequent offenses	\$300.00

Approved as to legal form and character