

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, §21D. 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 and Beverage Serviceware, 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 the sale and use of certain single use plastic items by food service and retail establishments 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:

“Accessories” means any food and beverage serviceware items that are not dishware and containers. The term “accessories” as used in this section includes, but is not limited to, straws, forks, spoons, knives, chopsticks, stirrers, condiment packages, and napkins.

“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.

“Dishware and Containers” means all containers, bowls, plates, trays, cartons, cups, lids, film wrap, and other items on or in which prepared foods and beverages are packaged or directly placed.

“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.

“Food Establishment” means a retail 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 Massachusetts Retail Food Code, 105 CMR 590, as it may be amended from time to time.

“Full Service Food Establishment” means a food establishment where customers are seated at a table either by waitstaff or by themselves, and where orders are taken and served by waitstaff at the table.

“Packing material” means materials used to hold, cushion, or protect an item packed in a container for shipping, transport, or storage. The term “packing material” as used in this section includes, but is not limited to, packing “peanuts”, shipping boxes, coolers, ice chests, or similar containers.

“Prepared food” means any food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises where the food or beverages are to be served. For the purposes of this Section 12-72, prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.

“Recyclable” refers to 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. Such materials must be accepted and recycled by the Materials Recovery Facility (MRF) 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 food and beverage serviceware that will be used multiple times in its same form by a food establishment. 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” means food and beverage serviceware, that is not reusable, as defined above, and are designed to be used once and then discarded, and not designed for repeated use and sanitizing.

**(e) Prohibited use and distribution of certain food and beverage serviceware and single use items.**

- (i) Prohibition of the following items took effect on January 1, 2020, and shall continue to be in effect as of the effective date of this ordinance.
  - (1) Food establishments are prohibited from dispensing prepared food or beverages to any person in single use 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 serviceware in place of using single use food serviceware for all food served on the premises. Food establishments using any single use food serviceware and stirrers are strongly encouraged to use biodegradable, compostable, reusable or recyclable food serviceware and stirrers.
  - (4) Retail establishments are prohibited from selling or distributing single use food containers made from foam polystyrene to customers.
  - (5) Retail establishments are prohibited from selling or distributing to customers any packing material that is made in whole or in part from foam polystyrene.
  
- (ii) The following prohibitions shall take effect on March 1, 2024.
  - (1) The intentional release of helium filled balloons is prohibited. Any helium balloons must be sold with weighted attachments designed to limit unintentional release.
  - (2) Retail establishments are prohibited from selling or distributing dishware and containers that are not reusable, compostable, or recyclable to consumers. This prohibition includes, but is not limited to, dishware and containers made from black plastic, foam polystyrene, or paper lined with polyethylene or other petroleum-based plastic.
  - (3) Retail establishments are prohibited from selling or distributing packing materials that are not reusable, compostable, or recyclable to consumers, including, but not limited to, those made from foam polystyrene.

- (4) Food establishments are prohibited from dispensing prepared food to any consumer in dishware and containers larger than 4 ounces that are not reusable, compostable, or recyclable. This prohibition includes, but is not limited to, dishware and containers made from black plastic, foam polystyrene, or paper lined with polyethylene or other petroleum-based plastic.
  - (5) Food establishments may not automatically provide single use accessories, including in takeout orders, whether orders are placed online, via phone, or in person. Such single use accessories may be provided only upon the request of the consumer either directly or in response to an inquiry by the food establishment. Single use accessories may not be prepackaged in sets. In addition, food establishments may have single use accessories available at self-service stations.
  - (6) The City of Newton is prohibited from serving a) prepared food or beverages in dishware and containers that are not reusable, compostable, or recyclable; and b) single use condiment packages. Notwithstanding the foregoing, the City of Newton may distribute condiment packages upon request.
  - (7) Full service food establishments shall utilize only reusable food and beverage serveware for dine-in customers.
- (f) **Effective date.** The effective date shall be upon passage of this ordinance or as otherwise specified herein.

**(g) Enforcement.**

- (i) 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.
- (ii) 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.
- (iii) 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 MRF, or compostable from their commercial organics hauler and associated compost end site.
- (iv) In the event that the commissioner determines that compliance with any provision of this Section 12-72 is not feasible due to industry wide unavailability of compliant items, the commissioner may suspend enforcement of such provision for all food and retail establishments until the commissioner determines that the supply of compliant items has been sufficiently restored.

- (v) The provisions of this Section 12-72 shall be enforced by the commissioner, or their designee.

**(h) 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 C-32, 09/18/23)