

ORDINANCE NO. 2019-5
TOWN OF BARRINGTON

AN ORDINANCE TO AMEND

Chapter 161
SOLID WASTE

Article IV
POLYSTYRENE FOOD SERVICE AND PACKING MATERIALS

161-11 Purpose

The purpose of this ordinance is to improve the environment in Barrington and the health, safety, and welfare of its resident by banning polystyrene food service and packing materials, which are not easily recycled and when littered or discarded, creates undesirable impacts on water quality, stormwater, and wildlife. Furthermore, there are alternatives that are reusable, recyclable or compostable, which are already on the market and readily available.

161-12 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.

FOOD ESTABLISHMENT Any operation, whether or not operating as a commercial establishment and whether or not operating for a profit, that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, either on a permanent or temporary basis. This includes, without limitation, restaurants, food trucks, catering services, private clubs, social groups, grocery stores, public and private school cafeterias, and any other public or private place or event where food is served.

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.

POLYETHYLENE TEREPHTHALATE (PFT) A plastic often identified with resin code 1.

POLYSTYRENE (PS) 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. A plastic often identified with resin code 6.

POLYVINYL CHLORIDE (PVC) A plastic often identified with resin code 3.

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 Town, regardless of whether it is consumed on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the Barrington 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 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 and customer that is provided take-out containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

161-13 Regulation of Disposable Food Service Ware

A. Food Establishments are prohibited from providing Prepared Food to any person 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 foam Polystyrene food service ware to customers.

D. Retail Establishments are prohibited from selling Prepared Food in foam Polystyrene food service ware to customers.

E. All Town facilities, Town-managed concessions, Town-sponsored events, and Town permitted events are prohibited from using Disposable Food Service Ware that contains or utilizes Polystyrene, polyvinyl chloride or polyethylene terephthalate.

F. All Disposable Food Service Ware that contains Polystyrene, polyvinyl chloride or polyethylene terephthalate is prohibited on any Town property, including, but not limited to, any Town beach, Town park, or other Town recreation area.

161-14 Regulation of Packing Materials

A. No person may sell, offer for sale, or otherwise distribute for compensation within the Town Packing Materials, including shipping boxes and packing peanuts made, in whole or in part, from Polystyrene foam that is not wholly encapsulated or encased within a more durable material.

B. For purposes of this Section, Packing Materials shall include using such materials to hold, cushion, or protect items to be packed in a container for shipping, transport, or storage, (or compensation, where the packing takes place within the Town)

C. Notwithstanding the forgoing, this section shall prohibit:

(1) Receiving shipments within the Town that include Polystyrene Foam, or some other non-Compostable and non-Recyclable product, used as Packing Material;

(2) Re-using Packing Materials (or shipping, transport, or storage within the same distribution system), where the Packing Materials are not sent to a consumer or end user;

(3) Donating used Packing Materials to another person, where the donor receives nothing of value; or

(4) Using Packing Materials donated under subsection (C)(3), where the person using the Packing Materials receives nothing of value;

(5) The sale of goods packaged outside of the town that are packaged in Packing Materials which are wholly incidental to the goods sold provided that such goods are not repackaged within the Town.

161-15 Exemptions

A. Foods prepared or packaged outside the Town, provided such food is not altered or repackaged within the Town 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 Town Manager 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 person or establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Town Manager or designee. The Town Manager 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 expanded Polystyrene disposable food service containers 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 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.

D. Items necessary for Food Establishments to comply with the Americans with Disabilities Act, limited in quantity to reasonably accommodate individuals with an expressed need for such an accommodation.

161-16 Enforcement; violations; penalties

A. This article shall be implemented, administered and enforced by the Barrington Town Police Department or any other Town department or division designated by the Town Manager.

B. Upon being made aware of a potential violation of this article, the Barrington Town Police Department or other designee shall investigate and determine whether a violation has occurred.

C. If the investigation confirms that a violation has occurred, then the Barrington Town Police Department or other designee shall give written notice to the owner of the property, the owner's agent, or the person performing such violation that the violation is occurring and must stop.

D. Such notice shall be in writing and may be served upon a person to whom it is directed, either by delivering it personally to him or her or by posting same upon a conspicuous portion of the property and sending a copy of same by certified mail to the person to whom the notice is directed.

E. The owner, the owner's agent, or the person performing the violation is responsible for confirming, in writing, that the violation has ceased to the Barrington Town Police Department or other designee within 14 days of receipt of the notice.

F. A second violation after the fourteen-day response period of the first violation and within one year of the receipt of the confirmation that the violation had ceased shall incur a penalty of \$150.

G. A third violation within one year of the second and any subsequent violations shall incur a penalty of \$300.

H. Each occurrence of a violation after the first, and each day that such violation continues, shall constitute a separate violation and may be cited as such.

161-17 Appeals

Any violation charged under this article may be appealed, in writing, to the Town Manager within 14 days of receipt of a written notice of violation. The Town Manager may waive the individual violation or the requirements of this article on showing of good cause or undue hardship.

161-18 Implementation

Retail establishments shall comply with the provisions of this article relating to Disposable Food Service Ware and Packing Materials no later than July 1, 2019. All other persons or entities subject to this article shall comply with its provisions no later than January 1, 2020. This ordinance shall become effective upon passage.

Council Member

Filed: January 17, 2019
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Amended: January 23, 2019 and February 4, 2019
Adopted: February 4, 2019

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