

Andover Proposed Plastic Bag & Polystyrene Bylaws

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ARTICLE 55	THIN FILM SINGLE USE PLASTIC CHECKOUT BAG REDUCTION BYLAW
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To see if the Town will amend the Town of Andover General Bylaw of Article XII by adding a new Section 50: Thin Film Single Use Plastic Check Out Bag Reduction as follows:

Section 1. Findings and Intent

Thin Film Single Use Plastic Check Out Bags have a significant effect on marine (including freshwater systems) and terrestrial environment and human health; including, but not limited to: 1) harming marine and terrestrial animals through ingestion and entanglement; 2) polluting and degrading the terrestrial and marine environments; 3) clogging storm drainage systems; 4) creating a burden for solid waste disposal and recycling facilities; 5) requiring the use of fossil fuels in their composition; 6) degrading into microplastic pieces (<5mm) that are concurrently ingested by fish, crustaceans, bivalves and other ocean life moving up the food chain to disrupt human health; 7)

acting as a vector for stagnant water through which mosquito borne diseases can spread. Studies have shown that even “compostable” or “biodegradable” bags require very specific and controlled conditions into biodegrade, and have potentially negative environmental effects similar to conventional thin film single use plastic bags. Such bags should therefore be subject to the same restrictions as conventional thin film single use plastic check out bags.

NOW THEREFORE, the purpose of this bylaw is to protect Andover’s unique natural beauty and irreplaceable natural resources by reducing the number of single use plastic check out bags in circulation in the Town of Andover and to promote the use of reusable bags. Numerous Massachusetts communities have acted or are in the process of reducing use of thin film single use plastic check out bags.

Section 2. Definitions

- a. “Thin Film Single Use Check Out Bag” shall mean those bags typically with handles, constructed of high density polyethylene (HDPE), low density polyethylene (LDPE), linear low density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET) or polypropylene (other than woven and non-woven polypropylene fabric), if said film is less than 4.0mm¹ in thickness.
- b. “Department” shall mean the Town of Andover Health Division.
- c. “Health Agent” shall mean a person appointed by the Board of Health as its Health Agent.
- d. “Recyclable Paper Bag” shall mean a paper bag, with or without handles that contains at least 40% post-consumer recycled content, and displays in a visible manner on the outside of the bag 1) the word “recyclable” or a symbol identifying the bag as recyclable and 2) a label identifying the bags as being made from post-consumer recycled content and the percentage of post-consumer recycled content in the bag.
- e. “Reusable Bag” means a sewn bag with stitched handles that is specifically designed for multiple reuse that (i) can carry twenty five (25) pounds; (ii) is machine washable or is made of a material that can be cleaned or disinfected one hundred and twenty five (125) times; (iii) is made of either polyester, polypropylene, cotton or other natural fiber material; and (iv) has a thickness of greater than four (4.0) millimeters².
- f. “Polyethylene” is any of various lightweight thermoplastic resins made by polymerizing ethylene, a flammable hydrocarbon gas primarily occurring in natural gas, coal gas, and crude oil chiefly used for plastic bags, food containers and other products.
- g. “Compostable plastic bag” means conforming to the ASTM (American Society for Testing and Materials) D6400 for compostability.
- h. “Biodegradable plastic bag” means a plastic bag that conforms to the current ASTM D7081 standard specification for marine degradability.
- i. “Food Establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a “Food Establishment” for purposes of this ordinance.

Section 3. Regulated conduct

- a) No Food Establishment in Andover shall provide Thin Film Single Use Plastic Check Out Bags to customers.
- b) If Food Establishment provides bags to customers, with or without charge, the bags must be one of the following:

- 1) Recyclable Paper bag
- 2) Reusable Check Out bag; or
- 3) Cardboard boxes.

Section 4. Exemptions

- a) Thin film plastic bags typically without handles which are used to contain dry cleaning, newspapers, fruit, vegetables, nuts, grains, candy, wet items and other similar merchandise are not prohibited under this bylaw.
- b) All Food Establishments must provide at the point of sale, free of charge either reusable shopping bags or recyclable paper bags or both, at the Food Establishment's option, to any customer participating in the Supplemental Food Program for Women, Infants and Children (WIC) pursuant to M.G.L.c.111, or in the Supplemental Nutrition Assistance Program (SNAP) pursuant to M.G.L.c.18.
- c) The provisions of this bylaw do not apply to bags used by a non-profit corporation or other charity as defined by M.G.L.c.12 to distribute food, grocery products, clothing or other household items to clients.
- d) This bylaw does not prevent Food Establishments from selling to customers various types of plastic bags sold in packages containing multiple bags intended for personal use.

Section 5. Enforcement

(a) The Town of Andover Board of Health and its Director or his/her designee shall have the authority to administer and enforce this bylaw.

(b) Whoever, himself or by his servant or agent or as the servant or agent of any other person or firm or corporation, violates any of the provisions of these regulations may be penalized by a non-criminal disposition process as provided in MGL c. 40, §21D. Each day of violation, after written notice, is a separate violation.

(c) The following penalties shall apply:

(1) First offense: Warning

(2) Second offense: \$50

(3) Third offense: \$100 and appearance in front of Board of Health

(4) Fourth and subsequent offenses: \$200

Section 6. Effective Date

- a) This by law shall take effect following approval of the bylaw by the Attorney General on January 2, 2019 for Food Establishments
- b) The Director may exempt a Food Establishment from the requirements of this section for a period of up to six (6) months upon a finding by the Director that 1) the requirements of this section would cause undue hardship.

Section 7. Regulations

- a) The Town of Andover Health Department may adopt and amend rules and regulations to effectuate the purposes of this bylaw.

Section 8. Severability

- a) If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

Non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

Footnotes:

- 1 This measurement in Section 2a should be 4.0mils, not 4.0mm. This will be corrected on the floor at Town Meeting.
- 2 This measurement in Section 2e should be four (4.0) mils, not four (4.0) millimeters. This will be corrected on the floor at Town Meeting.

On request of David Bunting and others

ARTICLE 56	POLYSTYRENE FOOD AND BEVERAGE WARE AND PACKAGING REDUCTION BYLAW
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To see if the Town will amend the Town of Andover General Bylaw of Article XII by adding a new Section 49: Polystyrene Food and Beverage Ware & Packaging Reduction, as follows:

REDUCTION OF POLYSTYRENE

A new bylaw for the town of Andover prohibiting the use and distribution of foam and rigid polystyrene in food service ware and packaging material and requiring the use and distribution of biodegradable, compostable, reusable or recyclable products or materials in its place.

§ 1. FINDINGS AND INTENT

WHEREAS, the Town has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, styrene, a component of polystyrene, is a known hazardous substance, classified by the National Toxicology Program (NTP) as “reasonably anticipated to be a human carcinogen” and also recognized by the NTP as a potential food and beverage contaminant that may “leach from polystyrene containers used for food products”; and

WHEREAS, polystyrene is made from fossil fuels, a non-renewable resource; and

WHEREAS, polystyrene manufacture, use, and disposal requires substantial energy consumption and contributes to greenhouse gases and other adverse environmental effects; and

WHEREAS, polystyrene is not biodegradable or compostable, and is generally not recyclable; and

WHEREAS, polystyrene is a common environmental pollutant that fragments into smaller pieces that harm or kill marine life and wildlife when they ingest them;

WHEREAS, the EPA states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy"; and

WHEREAS, polystyrene is used as food service ware by food establishments operating in Andover; and

WHEREAS, disposable food service ware constitutes a portion of the litter in Andover's streets, parks and public places, which increases Andover's costs; and

WHEREAS, affordable and effective ways to reduce the negative environmental impacts of polystyrene products through the use of reusable, recyclable, biodegradable and/or compostable materials are available for most retail applications; and

WHEREAS, over 100 municipalities throughout the United States, Canada, Europe, and Asia have banned polystyrene food service ware, including Amherst, Brookline, Great Barrington, Somerville, and South Hadley in Massachusetts, as well as: Los Angeles, CA; Chicago, IL; Miami Beach, FL; Albany, NY; New York, NY; Portland, OR; and Seattle, WA.

NOW THEREFORE, the Town of Andover hereby enacts this bylaw to prohibit the use and distribution of foam and rigid polystyrene in food service ware and packaging material and require the use and distribution of biodegradable, compostable, reusable, or recyclable products or materials in their place.

§ 2. DEFINITIONS

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

ASTM STANDARD

Refers to materials meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended 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.

BIODEGRADABLE

Materials that will completely degrade and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

COMPOSTABLE

Materials that will completely degrade into, or otherwise become part of, usable compost (e.g. soil-conditioning material, mulch) in a safe and timely manner. Compostable disposable food service ware must meet ASTM-Standards for compostability and any bio-plastic or plastic-like product must be clearly labeled, preferably with a color symbol, such that any customer or processor can easily distinguish the ASTM Standard compostable plastic from non-ASTM Specification compostable plastic.

DISPOSABLE FOOD SERVICE WARE

All containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives, 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/or leftovers from partially consumed meals prepared at food establishments.

FOOD ESTABLISHMENT

An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a "Food Establishment" for purposes of this ordinance.

POLYSTYRENE

The term means and includes blown polystyrene and expanded and extruded foams (sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of EPS insulation) also referred to as expanded polystyrene (EPS), which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene); and in this chapter is referenced as "Foam Polystyrene." Foam Polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

The term also means and includes clear or solid polystyrene which is also known as "oriented," which is produced by stretching extruded PS film, improving visibility through the material by reducing haziness and increasing stiffness. This is often used in packaging where the manufacturer would like the consumer to see the enclosed product. This is referenced in this chapter as "Rigid Polystyrene." "Rigid Polystyrene" is generally used to make clear clamshell containers, and clear or colored straws, lids and utensils.

PREPARED FOOD

Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town of Andover. Prepared food may be eaten either on or off the premises, also known as "takeout food."

RECYCLABLE

Material that can be sorted, cleansed, and reconstituted using Andover's available recycling 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 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

Materials 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 also includes durable

containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

§ 3. PROHIBITED USE AND DISTRIBUTION OF DISPOSABLE FOOD SERVICE WARE

(a) Food establishments are prohibited from providing prepared food to customers in Foam Polystyrene or Rigid Polystyrene food service ware.

(b) All food establishments using any disposable food service ware will 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.

§ 4. EXEMPTIONS

(a) Any person may seek an exemption from the requirements of this chapter by filing a request in writing with the Board of Health. The Board of Health may waive any specific requirement of this chapter for a period of not more than 6 months if the person 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. The Board of Health’s decision to grant or deny an exemption shall be in writing and shall be final.

(b) Coolers and ice chests that are intended for reuse are exempt from the provisions of this chapter.

§ 5. ENFORCEMENT: VIOLATIONS AND PENALTIES

(d) The Board of Health shall have the authority to enforce this chapter by:

- (1) inspection and investigation;
- (2) the issuance of violation notices and administrative orders; and/or
- (3) civil court actions

(e) Whoever, himself or by his servant or agent or as the servant or agent of any other person or firm or corporation, violates any of the provisions of these regulations may be penalized by a non-criminal disposition process as provided in MGL c. 40, §21D. Each day of violation, after written notice, is a separate violation.

(f) The following penalties shall apply:

- (5) First offense: Warning
- (6) Second offense: \$50
- (7) Third offense: \$100 and appearance in front of Board of Health
- (8) Fourth and subsequent offenses: \$200

§ 6. SEVERABILITY: EFFECTIVE DATE

- (a) Each section of this chapter shall be construed as separate to the end that if any section, sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that chapter and all other chapters shall continue in full force.
- (b) This chapter shall take effect on 1/1/19 following Attorney General approval.

Non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

On request of David Bunting and others