

2019  
Commonwealth of Massachusetts  
Town of Essex  
Warrant for Special Town Meeting

Essex, ss:

To either of the Constables of the Town of Essex;

GREETINGS:

In name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Essex, qualified to vote as the laws direct, to meet in said Essex at the Essex Elementary School on Monday, November 18, 2019 at 7:30 p.m. and there and then to act on the following Articles, viz:

ARTICLE 1

To see if the Town will vote to amend Chapter 6 section 6-2.2 Definitions, USE, CHANGE OF, of the Town of Essex Zoning By-law by making the following changes:

**Amend by deleting the definition which presently reads:**

A change of use occurs when the change is from one principal use category to another, as listed in the section titled Land Use Regulations of this bylaw.

**And replace it with the following:**

A change of use occurs when the change is from one principal use category to another, as listed in the section titled Land Use Regulations of this bylaw. Any change affecting currently undefined or not categorized land use will be considered a change of use.

; or take any other action relating thereto.

ARTICLE 2

To see if the Town will vote to amend Chapter 6 section 6-3.2.1 Table of Dimensional Requirements, of the Town of Essex Zoning By-law by making the following changes:

- 1. Delete reference to Note b from Residential, Single and Two Family, Minimum Lot area (sq ft) from Table on page 608.**
- 2. Amend Section 6-3.2.2 Notes for Dimensional Requirements: by deleting the Note b. which presently reads:**

b. 40,000 square foot minimum per dwelling unit in the Water Resource Protection District.

**And replace it with the following:**

b. Deleted at FTM 2019

; or take any other action relating thereto.

## ARTICLE 5

To see if the Town will vote to amend Chapter 6 section 6-5.8 Unregistered and Inoperative Motor Vehicles, Junk Yards, of the Town of Essex Zoning By-law by making the following changes:

**Add a new subparagraph e (shown in italics below) so that the section reads as follows:**

6-5.8 Unregistered and Inoperative Motor Vehicles, Junk Yards.

a. There shall be no unregistered or inoperative motor vehicles permitted in a front yard.

b. No more than two operative unregistered motor vehicles shall be permitted in a back yard or side yard.

c. No inoperative cars shall be allowed unless they are in an enclosed building or screened from public view.

d. Junk yards, as defined in subsection 6-2.2 shall not be permitted in the town.

*e. Business land use shall be exempted from a, b, and c above if the sole primary business is related to repair, reconditioning, rebuilding and / or sale of motor vehicles not to exceed a total of 20 unregistered or inoperative motor vehicles on premises outside of enclosed buildings at any time.*

; or take any other action relating thereto.

## ARTICLE 6

To see if the Town will vote to amend Chapter 6 section 6-14 Temporary Moratorium on Recreational Marijuana Establishments, of the Town of Essex Zoning By-law by making the following changes:

**Delete Section 6-14 which currently reads:**

6-14 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS in its entirety

**And replace it with the following:**

6-14 TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS

6-14.1 Deleted in entirety at FTM 2019.

; or take any other action relating thereto.

## ARTICLE 7

To see if the Town will vote to amend the Town's General Bylaws by adding a new Section 7-9 titled "**Bylaw Regulating the Use of Certain Plastics by Commercial Establishments in the Town of Essex**", as follows:

### **7-9 BYLAW REGULATING THE USE OF CERTAIN PLASTICS BY COMMERCIAL ESTABLISHMENTS IN THE TOWN OF ESSEX**

#### **7-9.1 STATEMENT OF PURPOSE AND FINDINGS**

Numerous studies have shown that the production and use of single-use plastics and polystyrene have significant adverse impacts on the marine and land environments, especially in coastal

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communities, such as the Town of Essex. Some of these impacts include: injuries and potential death of marine animals through ingestion and entanglement, clogging of storm drainage systems, burdens on solid waste collection and recycling facilities, and the use of oil and other fossil fuels in the manufacturing process.

Even if recycled, many single-use plastics become a burden on recycling facilities, and they often end up in our streets and sewage systems, on our beaches, and in the ocean. It is well-known that plastic and polystyrene products do not degrade quickly, and as a result, the adverse impacts from these materials can last for years or even decades.

Studies have also shown that reducing the use of thin-film, single use plastic bags, polystyrene containers and table ware and plastic straws, stirrers and hotstoppers, results in improvements to the surrounding environment and benefits public health by freeing up space in landfills, storm drains and sewage treatment facilities. By requiring establishments to stop using these products and replace them with more environmentally appropriate alternatives, Essex residents will be able to greatly reduce their carbon footprint and improve the environmental and public health resources on which they have come to rely upon and enjoy.

## **7-9.2 DEFINITIONS**

ASTM Standard – refers to materials meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 and D6868 for biodegradable and compostable plastics, as those standards may be amended from time-to-time. Materials meeting these standards must be clearly labeled so as to be easily identified by consumers and regulators.

Board – the Town of Essex Board of Health.

Biodegradable – entirely made of wood, paper, bamboo, bagasse, or cellulose.

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 materials must meet ASTM standards for compostability.

Consumer – means any person purchasing or receiving food and other products from an Establishment.

Establishment – means any operation that serves, vends or otherwise provides food or other products to third-parties for consumption and/or use on or off the premises, whether or not a fee is charged, but not including the service of food within a home or other private setting. Any facility requiring a food permit in accordance with the Massachusetts State Food Code, 105 CMR 590.000, et seq. and/or regulations of the Board shall be considered an establishment for purposes of this bylaw.

Expanded 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 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," and 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.

Hotstopper – any device, include so-called “splash sticks”, intended for blocking the hole in lids for hot-liquid cups, that is made or manufactured for single use and is made of polypropylene, polyethylene, polystyrene, or any other material that does not meet the ASTM Standard.

Plastic Straw – any straw intended for consuming liquids that is made or manufactured for single use and is made of polypropylene, polyethylene, polystyrene, or any other material that does not meet the ASTM Standard.

Plastic Stirrer – any stick, hollow or otherwise, intended for mixing liquids that is made or manufactured for single use and is made of polypropylene, polyethylene, polystyrene, or any other material that does not meet the ASTM Standard.

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 establishment directly places or packages prepared foods or other products 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.

Single Use Plastic Bag – a bag, typically with handles, made of plastic with a thickness of 4.0 mils or less, that is provided at the point of sale for transport of purchased food or other products. This includes, but is not limited to, bags made of high-density polyethylene, low-density polyethylene or other materials that do not meet the ASTM Standard.

### **7-9.3 DISPOSAL PLASTIC STRAWS, STIRRERS AND HOT STOPPERS**

- a. No Establishment shall provide single-use plastic straws, stirrers and/or hot stoppers in connection with the sale or distribution of beverages to consumers.
- b. Establishments may provide consumers with straws, stirrers and hot stoppers made from compostable/biodegradable material such as paper, wood, or bamboo, or from other materials meeting the ASTM Standard.
- c. Establishments may provide consumers with straws, stirrers and/or hot stoppers made from durable reusable material such as glass, stainless steel or ceramic, provided that the straw, stirrer or hot stopper is not removed from the premises and is sanitized and reused by the establishment, or provided that the straw, stirrer or hot stopper was manufactured for reuse and is sold to the consumer for a fee in addition to the fee charged for the beverage.
- d. Nothing in this section shall prohibit a consumer from using their own straw, stirrer or hot stopper that is not provided by the establishment.
- e. Nothing in this section shall prohibit an establishment from selling straws, stirrers and/or hot stoppers when they are packaged for retail sale for use outside of the premises of the establishment.
- f. Should an establishment choose to offer paper straws, stirrers, or hot stoppers that contain gluten, the establishment must post a notice clearly advising customers about the presence of gluten in those items.

### **7-9.4 DISPOSABLE SERVICE WARE**

- a. No Establishment shall use disposable or single-use service ware made from expanded polystyrene (EPS) for the sale, distribution or consumption of food or other products to consumers.
- b. Establishments may provide consumers with disposable service ware made from compostable and/or biodegradable material, such as paper, wood or bamboo, or from other materials meeting the ASTM Standard.

- c. Establishments may provide consumers with service ware made from durable reusable material, such as glass, stainless steel or ceramic, provided that the service ware is not removed from the premises and is sanitized and reused by the establishment, or provided that the service ware was manufactured for reuse and is sold to the consumer for a fee in addition to the fee charged for product sold in the container.
- d. Nothing in this section shall prohibit a consumer from using their own service ware that are not provided by the Establishment.
- e. Nothing in this section shall prohibit an Establishment from selling polystyrene service ware when they are packaged for retail sale for use outside of the premises of the establishment.
- f. Nothing in this section shall prohibit an Establishment from selling or distributing foods or other products in polystyrene containers when the food was packaged in such container by the manufacturer or wholesaler and purchased by the Establishment in such package.

#### **7-9.5 SINGLE-USE PLASTIC BAGS**

- a. No Establishment shall use single-use plastic bags for the sale or distribution of food or other products to consumers.
- b. Establishments may use single-use plastic bags that are without handles and which are used: (1) to transport produce, bulk food, candy, meat or other products from a part of the establishment to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (3) to distribute newspapers and magazines; or (4) to protect clothing distributed by dry cleaning establishments.
- c. Establishments may provide consumers with reusable bags or bags made from compostable and/or biodegradable material such as paper, wood, or bamboo, or from other materials meeting the ASTM Standard.
- d. Nothing in this section shall prohibit a consumer from using their own single-use plastic bags or any other type of bags that are not provided by the Establishment.
- e. Nothing in this section shall prohibit an Establishment from selling single use plastic bags when they are packaged for retail sale for use outside the premises.
- f. Nothing in this section shall prohibit an Establishment from selling or distributing food or other products in single-use plastic bags when the food or product was packaged in such bag by the manufacturer or wholesaler and purchased by the Establishment in such package.

#### **7-9.6 VARIANCES**

- a. The Board of Health may vary application of any provision of this Bylaw, upon written application, by the owner or operator of an Establishment.
- b. No variance will be granted unless the applicant demonstrates that strict enforcement of the provision from which a variance is sought would result in undue hardship. For purposes of this Bylaw, “undue hardship” is defined as a situation unique to the Establishment in which there are no reasonable alternatives to the use of materials prohibited by this Bylaw, and that compliance with this Bylaw would create significant economic hardship for the Establishment.
- c. Prior to granting a variance, the Board of Health shall conduct a public hearing, notice of which shall be published once in a newspaper circulated in the Town at least seven days prior to the hearing and

shall be posted on the Town's website for at least seven days prior to the hearing. The costs of such publication shall be borne by the applicant.

- d. The Board of Health may impose such conditions upon the granting of a variance as it deems necessary to protect public health and the environment, including but not limited to a requirement that the variance will expire after a specified period of time.

#### **7-9.7 ENFORCEMENT**

- a. This Bylaw may be enforced by the Board of Health and/or its duly authorized agents.
- b. Any person who violates this Bylaw may be penalized by non-criminal disposition as provided by Massachusetts General Laws, Chapter 40, Section 21D. If non-criminal disposition is elected, then any person who violates the provisions of this bylaw shall be subject to penalties as follows:

First Offense – twenty-five dollars (\$25.00)

Second Offense - fifty dollars (\$50.00)

Third Offense - one hundred dollars (\$100.00)

Fourth and Further Offenses - three hundred dollars (\$300.00)

- c. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- d. The Board of Health, after a public hearing conducted in accordance with the procedures set forth in 105 CMR 590.14, may suspend or revoke the food permit of any Food Establishment failing to comply with this bylaw.
- e. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- f. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

#### **7-9.8 SEVERABILITY**

If any provision of this bylaw is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

#### **7-9.9 INTERACTION WITH OTHER LAWS**

In the case of a conflict between the requirements of this bylaw and any other federal, state or local law concerning the materials regulated herein, the more stringent requirements shall apply.

#### **7-9.10 EFFECTIVE DATE**

This bylaw shall take effect on January 1, 2021.

; or take any other action relating thereto.