

City of Medford
Prohibition on the Use of Polystyrene Based Disposable Food Containers

Sec. 38-47. - Short title.

This ordinance may be cited as the "Polystyrene Container Ordinance."

Sec. 38-48. - Purposes and intent.

The use and disposal of polystyrene has significant impacts on our City and our environment, including:

- (a) Harm to aquatic life when ingested;
- (b) Pollution of waterways;
- (c) Human health risks from potential exposure to chemicals leaching from polystyrene food containers and consumption of aquatic wildlife that contains polystyrene microplastics;
- (d) Limited recycling options for polystyrene containers and other polystyrene products.

The purposes of this article are to regulate the distribution of polystyrene in the City of Medford.

Sec. 38-49 – Definitions.

City Facility shall mean any building, structure, land, or recreational area owned, leased, or operated by the City of Medford.

Disposable Food Container shall mean single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages, including, without limitation, take-out foods and/or leftovers from partially consumed meals prepared by a food establishment. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, or utensils. It does not include single-use disposable packaging for unprepared foods.

Food Establishment shall mean 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. Food Establishment shall include any fixed or mobile structure or vehicle, whether permanent, transient, temporary, private, public, or non-profit that routinely serves prepared food or drink to the public for consumption on the premises or elsewhere. School cafeterias are included in this ordinance.

Polystyrene shall mean expanded polystyrene (sometimes called "Styrofoam," a Dow Chemical Co. trademarked form of insulation) which is a thermoplastic petrochemical material 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). The term "polystyrene" shall include clear or solid polystyrene which is known as "oriented polystyrene."

Prepared Food shall mean any food or beverage prepared on the Food Establishment's premises using any cooking or food preparation technique. Prepared food does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation. Prepared food may be eaten on or off the Food Establishment's premises.

Sec. 38-50 – Limitations.

Regulated activities.

- (a) Except as provided herein, Food Establishments and City Facilities are prohibited from dispensing Prepared Food to customers in disposable food service containers made from polystyrene.
- (b) City departments or agencies shall not purchase or use disposable food service containers made from Polystyrene while in the performance of official City duties. Individuals, contractors, vendors, or other entities shall not use disposable food service containers made from Polystyrene in a City facility or on City property while acting or performing under a City contract, lease, license, permit, grant, or other agreement.
- (c) Nothing in this section shall prohibit someone from purchasing or using Polystyrene containers for personal use, nor shall it prohibit any individual from purchasing or using said containers for a private function or when serving food on property owned by that person.

Alternative activities.

Food Establishments are strongly encouraged to use reusable food service containers and cutlery, and when possible biodegradable, compostable alternatives. Compostable materials should meet American Society of the International Association for Testing and Materials Standards for compostability.

Sec. 38-51 – Enforcement.

- (a) Regulations. The Board of Health may promulgate regulations consistent with this ordinance to enforce and otherwise implement the provisions of this ordinance.

- (b) The Health Department may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Health Department shall not preclude enforcement through any other lawful means.

- (c) Penalties and Fines for Violations

Violations of this ordinance may be enforced as follows:

This ordinance shall be enforced by the Health Department or its designees. Whoever violates any provision of this ordinance may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to the following penalties:

| | |
|----------------------------------|-----------------|
| First Offense: | Written warning |
| Second Offense: | \$100 |
| Third Offense: | \$200 |
| Fourth (and subsequent) Offense: | \$300 |

The written warning shall specify the date and time of the first violation and warning that any subsequent violations within a 12-month rolling period shall result in the imposition of a monetary penalty. No monetary penalty shall be imposed for the first violation. Subsequent violations of this ordinance at or by a Food Establishment within 12 months of a first or subsequent offense shall result in the imposition of increased penalties pursuant to the above schedule of fines. A Food Establishment must be without a violation of this ordinance for 12 months for a subsequent offense to be deemed a first offense, otherwise the monetary penalty will be commensurate

with the number of offenses committed by the Food Establishment in the current 12-month period.

- (d) The Board of Health or its designee shall inquire on an annual basis regarding any Food Establishment's compliance with this ordinance as a condition for renewal of the establishment's food service permit.

Sec. 38-52 – Deferment.

- (a) Upon written application from a Food Establishment, the Board of Health, after a public hearing, may temporarily defer application of this ordinance for a Food Establishment for up to a one-year period, upon a showing by the Food Establishment that the conditions of this ordinance would cause undue hardship. The Board of Health shall, in its sole discretion, decide as to whether the applicant has demonstrated an "undue hardship" according to the standards set forth in the following subsection. The establishment must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.
- (b) For purposes of this ordinance, an "undue hardship" means:
- 1) Circumstances or situations unique to the particular retail establishment such that there are no reasonable alternatives to disposable food containers that are not made of polystyrene;
 - 2) Circumstances or situations unique to the retail establishment such that compliance with the requirements of this chapter would deprive a person of a legally protected right; or
 - 3) Circumstances where a retail establishment requires additional time in order to draw down an existing inventory of disposable food containers made of polystyrene.

Any Food Establishment receiving an exemption under section 38-52(b)(3) of this ordinance shall file with the Director of Public Health monthly reports on inventory reduction and remaining stocks. Failure to file such reports may result in loss of deferment status.

Sec. 38-53 – Effective date.

This ordinance shall become effective on July 1, 2023, or a date that is one hundred eighty (180) days from the date that the Mayor approves this ordinance, or it otherwise becomes effective, whichever is later.

Immediately upon enactment of this ordinance, the City's Health Department shall direct an effort to educate Food Establishments and the general public about this ordinance.

Sec. 38-54 - Severability.

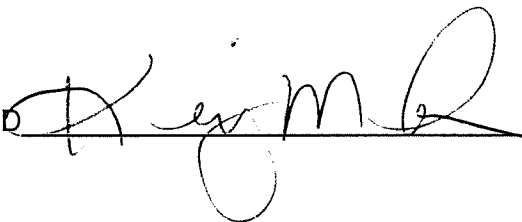
Each separate provision of this ordinance shall be deemed independent of all other provisions herein. If a court of competent jurisdiction declares that any provision of this ordinance is invalid, illegal, or unenforceable then the remaining provisions of this ordinance shall remain valid and enforceable.

APPROVED  8/31/22 MAYOR


IN COUNCIL APRIL 12, 2022 PASSED TO TAKE FIRST READING

ADVERTISED MAY 5, 2022 MEDFORD TRANSCRIPT

IN COUNCIL MAY 17, 2022 PASSED TO TAKE ITS THIRD READING TO BE ORDAINED

APPROVED  CITY SOLICITOR

A TRUE COPY, ATTEST


ADAM L. HURTUBISE
CITY CLERK