

POLYSTYRENE FOAM FOOD SERVICE CONTAINER ORDINANCE

1. PURPOSE:

It is in the best interests of the citizens of and visitors to the Town of Southwest Harbor to protect the environment and natural resources of the Town and the State of Maine and the bodies of water within and adjacent to the Town by prohibiting the use and distribution of polystyrene foam food service containers.

Therefore the purpose of this Ordinance is to ban the use of polystyrene foam food service containers to reduce litter, to minimize impact on the Town Transfer Station while increasing recyclables, and to reduce the environmental impact caused by the use of polystyrene foam food service containers.

2. AUTHORITY:

This Ordinance is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Article VII, Part 2, Section 1, the provisions of Title 30-A M.R.S. Chapter 141, and the general power of municipalities to enact police power ordinances.

3. DEFINITIONS:

ESTABLISHMENT: A person or entity engaging in the sale or distribution of Prepared Food or beverages to consumers. This includes, but is not limited to, retail vendors of food or beverages, restaurants, take-outs, schools, hospitals, religious institutions, governmental institutions, community centers, markets, temporary and/or seasonal vendors and on-site events.

FOOD PACKAGER: Any person who places food in packaging materials for the purpose of retail sale of those products.

POLYSTYRENE FOAM: Expanded and extruded polystyrene foam and blown polystyrene, generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons. This does not include oriented (clear) polystyrene.

POLYSTYRENE FOAM FOOD SERVICE CONTAINER: Any food container made, in whole or in part, of polystyrene foam and used to package or hold food or beverage for onsite or offsite consumption.

PREPARED FOOD: Food or beverages which are served or sold at an establishment having been either previously prepared elsewhere or prepared at the establishment.

4. RESTRICTIONS:

A. No Establishment in the Town of Southwest Harbor shall serve or sell prepared food in – and no Food Packager shall package food in – polystyrene foam food service containers.

B. No party shall sell or distribute polystyrene foam food service containers within the Town of Southwest Harbor.

5. EXEMPTIONS:

A. Items pre-packaged in polystyrene foam food service containers outside the Town of Southwest Harbor may be sold without repackaging those items.

B. Uncooked meat and seafood may be sold in polystyrene foam food service containers.

C. Items to be shipped to points outside Southwest Harbor may be packaged in polystyrene foam food service containers for shipping.

D. A Retail Vendor or Food Packager shall be exempt from the provisions of this Ordinance in a situation deemed to be an emergency by the Town Select Board, for the immediate preservation of the public health and safety.

6. VIOLATIONS AND ENFORCEMENT

A. The Town Manager or his/her designee(s) shall have the primary responsibility of the enforcement of this Ordinance. If the Town Manager or his/her designee(s) determines that a violation of the Ordinance has occurred, a written warning notice shall be issued to the Store. If an additional violation occurs after a written warning has been issued, the Town Manager or his/her designee shall issue a written Notice of Violation (NOV) and shall impose a penalty as set forth below.

B. Violations of this Ordinance shall be punishable by fines as follows:

1. A fine not exceeding \$100 for the first written NOV violation in a one-year period.
2. A fine not exceeding \$200 for the second and each subsequent written NOV in a one-year period. Each day that a violation occurs shall be considered a subsequent violation.
3. Fines are payable within 15 days of receipt of written notice of violation.

7. APPEALS

Any decision, action, or inaction pertaining to this Ordinance may be appealed to the Maine Superior Court (Hancock County) within 30 days of the decision, action or inaction.

8. SEVERABILITY

In the event any portion of this Ordinance shall be found to be invalid by a court of competent jurisdiction, the remaining portions of the Ordinance shall remain in effect.

9. EFFECTIVE DATE:

The provisions of this Ordinance shall become effective on April 22, 2019.