

City of Northampton
MASSACHUSETTS

In City Council

September 3, 2020

Upon recommendation of the Mayor's Youth Commission, Councilor William H. Dwight and Councilor Rachel Maiore

20.114 Plastic Reduction & Sustainability Ordinance

ORDINANCE

An ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by amending Section 272-18, providing for Environmental protection and solid waste reduction.

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Remove: Existing §272-18

Add:

§Section 272-18: Environmental protection and solid waste reduction.

A. General definitions. As used in this ordinance, the following terms shall have the meanings indicated:

ASTM STANDARD

Standards developed by the American Society for Testing and Materials (ASTM), including only International Standards D6400 or D6868 for biodegradable and compostable plastics. D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities and D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate.

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 by the American Society for Testing and Materials specifically for an aquatic environment.

BIODEGRADABLE BAGS

Bags that:

- (1) contain no polymers derived from fossil fuels; and
- (2) are intended for single use and will decompose in a natural setting to an environmentally beneficial material at a rate comparable to other biodegradable materials such as leaves and food waste.

BPI CERTIFIED

Refers to compostable products and packaging certified as compostable according to the Biodegradable Products Institute.

CHECKOUT BAG

Carryout bags provided by a store to a customer at the point of sale. Checkout bags are distinct from product bags.

COMPOSTABLE

Disposable food service ware or packaging is compostable if it meets ASTM Standards for compostability and is BPI-certified.

COMPOSTABLE BAGS

Bags that:

- (1) conform to the current ASTM D6400 standard for compostability; and
- (2) are certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity.

DISPOSABLE FOOD SERVICE WARE

All containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, and other items designed for one-time or non-durable uses

- (1) in which any food vendor directly places or packages prepared foods; or
- (2) which are used to consume foods.

Such food service ware includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at food establishments.

DISPOSABLE FOOD SERVICE WARE ACCESSORY

All types of disposable food service ware provided alongside prepared food, including but not limited to utensils, chopsticks, napkins, cup lids, cup sleeves, food or beverage trays, condiment

cups or packets, straws, stirrers, splash sticks, and cocktail sticks. This does not include such items that are necessary for the containment of foods, such as plates, bowls and bags.

FOOD ESTABLISHMENT

An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.001. 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.

ONLINE FOOD ORDERING PLATFORM

The digital technology provided on a website or mobile application through which a consumer can place an order for pick-up or delivery of prepared food. Such platforms include those operated directly by food establishments, by companies that provide delivery of prepared meals to consumers, and by online food ordering systems that connect consumers to prepared food vendors directly.

POLYETHYLENE

The term polyethylene refers to the synthetic plastic polymer used to make grocery bags, shampoo bottles, and other containers, among other products. It is commonly known and referred to as plastics #2 and #4. For the purposes of this legislation, both plastics #2 and #4 should be considered polyethylene.

POLYETHYLENE TEREPHTHALATE

The term polyethylene terephthalate, also known as PET, is a common plastic polymer widely used to make packaging for foods and beverages, such as soft drinks, juices and water, among other products. It is commonly known and referred to as plastic #1.

POLYPROPYLENE

The term polypropylene, also known as PP, refers to a synthetic plastic polymer used to make food containers, disposable diapers, disposable cutlery and plastic straws, among other products. It is commonly known and referred to as plastic #5.

POLYSTYRENE

The term polystyrene refers to a synthetic plastic polymer used to make food containers, cups, packaging materials, utensils, among other products. It is commonly known and referred to as plastic #6.

POLYSTYRENE LOOSE FILL PACKAGING

A void-filling packaging product made of expanded polystyrene that is used as a packaging fill, commonly known as "packing peanuts".

POLYVINYL CHLORIDE

The term polyvinyl chloride, also known as PVC, refers to a synthetic plastic polymer used to make plastic straws and utensils, among other products. It is commonly known and referred to as plastic #3.

PREPARED FOOD

Prepared food means any food or beverage prepared by the food establishment at any location owned or controlled by the food establishment 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 either on or off the premises.

PRODUCT BAG

Bags without handles in which loose produce, bulk items, unwrapped baked goods or prepared food, or other products are usually placed by the consumer to deliver such items to the point of sale or checkout area of the store. These are also sometimes used by cashier or checkout personnel to contain items at point of sale.

RECYCLABLE

Material that can be sorted, cleansed, and reconstituted by Northampton's year-round municipal recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include thermally destroying or converting solid waste.

RECYCLABLE PAPER BAG

Paper bags that:

- (1) are 100 percent recyclable including the handles; and
- (2) contain at least 40% post-consumer recycled paper content; and
- (3) display the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

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

Products that are designed to be used more than once in the same form by a food or retail establishment.

REUSABLE BAGS

Bags that are not made of plastic, are for multiple use and are made of cloth, fabric or other durable materials that do not decompose into harmful chemical components. A reusable bag is recyclable, biodegradable or compostable and is specifically designed and manufactured for multiple reuse.

B. General prohibition and regulation.

- (1) Food establishments are prohibited from providing prepared food to customers using polystyrene, polyvinyl chloride, polyethylene, polyethylene terephthalate, or other nonrecyclable disposable food service ware.
- (2) Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. All compostable food service ware used by food establishments must be clearly labeled with the applicable standard on the product or its packaging.
- (3) Retail establishments are prohibited from selling or distributing polystyrene food service ware to customers. This includes sale of polystyrene ware for home food use.
- (4) Retail establishments are prohibited from selling or distributing polystyrene loose fill packaging to customers.
- (5) Retail and food establishments may only sell or distribute product bags which are either (i) biodegradable, (ii) compostable, or (iii) reusable. All compostable product bags used by retail and food establishments must be clearly labeled with the applicable standard on the bag.
- (6) If any retail establishment provides a checkout bag to customers, the bag shall be either a recyclable paper bag, or a reusable bag.
- (7) No retail or food establishment shall sell or distribute straws made of polystyrene, polyvinyl chloride, polyethylene or polyethylene terephthalate. Retail and food establishments may sell or distribute compostable, biodegradable, and reusable straws upon request by the consumer. Upon request of a plastic straw, retail and food establishments may sell or distribute polypropylene straws. Retail and food establishments are encouraged to offer compostable or reusable straws.
- (8) Food establishments must provide disposable food service ware accessories only upon request by customers or at a self-serve station.
 - a) Online food ordering platforms that take orders of prepared food for pickup by or delivery to customers in the City of Northampton are required to provide options on their ordering platform that enable customers to choose which disposable food service ware accessories to include with each order. When no options are selected by the customer, the default practice shall be that no disposable food service ware accessories are provided. The platform must provide the food establishment an option/method for listing a customized list of accessories that are offered by each food establishment listed on their platform.
 - b) For delivery orders, food establishments may choose to include specific accessories, such as cup lids, spill plugs, and trays, in order to prevent spills and deliver food and beverages safely.

C. Exemptions.

- (1) The Mayor's designee may exempt a food or retail establishment from the requirements of this ordinance for a period of up to one (1) year, upon a finding by the Mayor's designee that the requirements of this ordinance would cause undue hardship to the establishment. The Mayor's designee may approve two (2) additional 6-month periods upon the showing of a continued undue hardship. An "undue hardship" shall only be found in:
 - (a) Circumstances or situations unique to the particular food or retail establishment such that there are no reasonable alternatives to plastic products or materials banned in this ordinance that are necessary to the establishment's operations; or

- (b) Circumstances or situations unique to the food or retail establishment such that compliance with the requirements of this ordinance would deprive a person of a legally protected right; or
 - (c) Circumstances where a food or retail establishment requires additional time in order to draw down an existing inventory of plastic products or materials banned in this ordinance.
- (2) Any food or retail establishment receiving an exemption shall file with the Mayor's designee monthly reports on inventory and remaining stocks.
- (3) Any food or retail establishment seeking an exemption shall apply to the Mayor's designee using forms provided by the Health Department, and shall allow the Mayor's designee, or his or her designee, to access all information supporting its application.
- (4) The Mayor's designee may approve the exemption request, in whole or in part, with or without conditions.
- (5) The Mayor's designee, by regulation, may establish a fee for exemption requests.
- (6) Certain products are exempt from this ordinance's prohibitions; these include:
 - (a) Flexible transparent covering (commonly referred to as plastic wrap).
 - (b) Thin-film plastic bags used to contain dry cleaning or newspapers, typically without handles.
 - (i) Product bags are not exempt from this ordinance's prohibitions.
 - (c) Packaging utilized for prescription drugs.

D. Penalties and enforcement.

- (1) The Mayor's designee shall provide to food and retail establishments succinct materials explaining the requirements of this ordinance and recommendations for proper waste stream procedure.
- (2) If it is determined that a violation of this ordinance has occurred, the Mayor's designee shall issue a warning notice for the initial violation.
- (3) If an additional violation of this ordinance has occurred within one year after a warning notice has been issued for an initial violation, the Mayor's designee shall issue a notice of violation and shall impose a penalty against the food or retail establishment.
- (4) Each penalty of this ordinance's clauses shall be no less than: 1) \$50 for the first offense; 2) \$100 for the second offense and all subsequent offenses. Payment shall be made within twenty-one (21) days to the City Clerk. Non-payment of such fines may be enforced through civil action in the Northampton District Court. No more than one (1) penalty shall be imposed upon a food or retail establishment within a seven (7) calendar day period.

E. Severability.

If any provision or section of this ordinance shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

F. Effective date.

This ordinance will take effect on 01/01/2022.

In City Council, January 7, 2021
Passed First Reading on Roll Call Vote of 8 Yes, 0 No, 1 Recused (Councilor Jarrett)

Attest: Laura Krutzler, Clerk of Council

In City Council, January 21, 2021
Passed Second Reading on Roll Call Vote of 8 Yes, 0 No, 1 Recused (Councilor Jarrett)

Attest: Laura Krutzler, Clerk of Council

Approved: David J. Narkewicz, Mayor

Passed two readings, ordained and enrolled.
I hereby certify that the above Ordinance passed the Northampton City Council on January 21, 2021

David J. Narkewicz, Mayor approved the Ordinance on January 25, 2021

Attest: Laura Krutzler, Clerk of Council