

Meeting of September 21, 2015

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #4-15/16 – Amending Chapter 9, “Garbage and Refuse”, to add provisions regarding ban on use of polystyrene foam. Passed first reading on 9/9/15. ROLL CALL VOTE. Passage requires majority vote.

Position:

Polystyrene, or as it is commonly referred to as styrofoam®, is a petroleum-based plastic made from the styrene monomer. A light weight, good insulator, polystyrene is largely air. Many products use polystyrene to either keep items warm or cold, or use the product to pack and ship items safely. Polystyrene is not easily recycled and when littered or discarded, creates undesirable impacts on water quality, stormwater, and wildlife. There are alternatives that are reusable, recyclable or compostable, which are already on the market and readily available.

The State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State since 1990. Over 95 cities across the United States have in one form or another banned the use or sale of polystyrene.

In April, The City of Portland implemented its ban on polystyrene throughout its community. Staff believes consistency is very important when developing and interpreting ordinance language. Adopting an ordinance similar to Portland will provide consistency from one community to the next and have the same rules between the two neighboring communities. I have talked with Portland officials and they are supportive of South Portland basing its ordinance language from Portland’s.

The proposed ordinance includes the following Prohibition Language:

(a) No retail vendor in the City of South Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the City of South Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.

(d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City.

Exemptions in the proposed ordinance include:

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) Retail vendors and food packagers that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee in writing on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

The enforcement powers are held by the City Manager or his/her designee and a stepped process of warnings and fines are included in the oversight of the ordinance.

This ordinance would go into effect on March 1, 2016. This will allow merchants to find alternative products and for the City to educate the public and merchants of the provisions of the ordinance. Staff is well underway in developing an educational program and will be ready to begin the outreach.

This topic was discussed at the August 10, 2015 workshop and passed first reading on September 9, 2015. At the September 9th meeting, Councilor Blake commented on the language in Sec. 9-759. It was suggested to amend the ordinance to read as follows:

Sec. 9-759. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the retail vendor or food packager that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be civil violations punishable by fines as follows:

(a) A fine not exceeding \$250 for the first violation following the warning notice in a one-year period;

(b) A fine not exceeding \$500 for the second and each subsequent violation following the warning notice in a one-year period.

This change is not substantive and would not require a new first reading.

This amendment is in order for second reading and action.

Requested Action:

This item is in order for Council action.


City Manager



CITY OF SOUTH PORTLAND

LINDA C. COHEN
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
CLAUDE V.Z. MORGAN

District Two
PATRICIA SMITH

District Three
MELISSA LINSKOTT

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDINANCE #4-15/16

THE COUNCIL of the City of South Portland hereby ordains that Chapter 9, "Garbage and Refuse" of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

SOUTH PORTLAND CODE OF ORDINANCES

Chapter 9

GARBAGE AND REFUSE

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ARTICLE VII. POLYSTYRENE FOAM

Sec. 9-755. Findings; purpose.

WHEREAS, the City is located on Casco Bay, an area known world-wide for its natural beauty, fish and other wildlife;

WHEREAS, the City Council of the City believes that the City has an obligation to maintain and preserve the City's special natural environment;

WHEREAS, maintenance of the City as litter-free as possible is important to protect and preserve its natural environment and enhance its quality of life for residents and visitors;

WHEREAS, polystyrene foam is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City;

WHEREAS, there is no economically feasible means of recycling polystyrene foam locally;

WHEREAS, the State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State or its political subdivisions (see 38 M.R.S. §§ 1651-1654);

WHEREAS, polystyrene foam is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them;

WHEREAS, disposable food containers made from polystyrene foam constitute a portion of the litter in City streets, parks, and public places that is highly durable, buoyant, and non-biodegradable and, therefore, persists and detracts from the appearance of the area longer than many other types of litter;

WHEREAS, the City desires to replace polystyrene foam food containers with reusable, recyclable or compostable alternatives; and

WHEREAS, such alternatives are readily available.

Sec. 9-756. Definitions.

As used in this Article, the following terms shall have the following meanings:

“Food Package” means any person located within the City who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

“Prepared food” means food or beverages which are served at the food vendor’s location having been previously prepared elsewhere or are prepared at the vendor’s location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. “Prepared food” does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

“Polystyrene foam” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) that 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, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this Article, the term “polystyrene” shall not include clear polystyrene known as “oriented polystyrene.”

“Retail Vendor” means any person, restaurant, store, shop, sales outlet or other establishment, including, without limitation, a grocery store, convenience store or a delicatessen, located within the City and that offers prepared food for retail sale.

Sec. 9-757. Prohibitions.

(a) No retail vendor in the City shall serve or sell prepared food in polystyrene foam containers and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.

(b) No retail vendor in the City that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.

(c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.

(d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.

(e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City.

Sec. 9-758. Exemptions.

(a) The sale and packaging of raw seafood is exempt from the provisions of this Article.

(b) A retail vendor or food packager that is currently existing or is established in the City before the effective date of this Article may be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee if the retail vendor or food packager requests an exemption in writing from the City Manager and demonstrates to the City Manager or his/her designee that compliance with the provision constitutes undue hardship for the retail vendor or food packager. Undue hardship includes, but is not limited to, situations unique to the food vendor that are not generally applicable to other retail vendors or food packagers in similar circumstances. The City Manager or his/her designee shall make a written decision on each exemption request.

(c) Retail vendors, food packagers, City departments, City facilities and City contractors are exempt from the provisions of this Article in a situation deemed by the City Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

Sec. 9-759. Violations and enforcement.

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice

to the retail vendor or food packager that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be civil violations punishable by fines as follows:

(a) A fine not exceeding \$250 for the first violation in a one-year period;

(b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

Sec. 9-760. Effective Date.

(a) This Article shall become effective on March 1, 2016.

(b) This Article shall be automatically repealed if and as long as there is, as determined by the City Council by order, a developed and maintained effective City-wide recycling program approved by the City's Public Works Director for polystyrene foam food and beverage containers.

(c) This Article shall be automatically repealed on the day, as determined by the City Council by order, that statewide legislation or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this Article or in the event, as determined by the City Council by order, that a pertinent Maine or federal administrative agency enacts regulations preempting such action.

Sec. 9-761. Severability.

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

Fiscal Note: Less than \$1,000

Date: September 9, 2015