

TOWN OF BROOKLINE



Article 8.32

Sustainable Containers and Packaging

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Section 8.32.1: DEFINITIONS

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

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 specifically for an aquatic environment and are clearly labeled with the applicable standard.

CATERER Refers to a food establishment with a catering license issued by the Town that derives at least 50% of its revenues from catering orders.

COMPOSTABLE Refers to bioplastic materials certified to meet the American Society for Testing and Materials International Standards D6400 or D6868, as those standards may be amended. ASTM D6400 is the specification for plastics designed for compostability in municipal or industrial aerobic composting facilities. D6868 is the specification for aerobic compostability of plastics used as coatings on a compostable substrate. Compostable materials shall also include products that conform to ASTM or other third-party standards (such as Vinçotte) for home composting. Any compostable product must be clearly labeled with the applicable standard on the product.

DISPOSABLE FOOD SERVICE WARE All food and beverage containers, bowls, plates, trays, cartons, cups, lids, straws, stirrers, forks, spoons, knives, film wrap, and other items designed for one-time or non-durable uses on or in which any food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and leftover food from partially consumed meals prepared at food establishments.

DIRECTOR refers to the Director of the Department of Public Health or the Director's designee.

FOOD ESTABLISHMENT An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human

consumption. This includes, without limitation, restaurants and food trucks.

PACKING MATERIAL Polystyrene foam used to hold, cushion, or protect items packed in a container for shipping, transport, or storage. This includes, without limitation, packing "peanuts"; and shipping boxes, coolers, ice chests, or similar containers made, in whole or in part, from polystyrene foam that is not wholly encapsulated or encased within a more durable material.

POLYSTYRENE There are two basic forms, Foam and Rigid Polystyrene. Foam includes without limitation blown, expanded (EPS), and extruded foams such as "Styrofoam," a Dow Chemical Co. trademarked form of insulation. Foam Polystyrene is generally used to make opaque cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. Rigid or oriented polystyrene is generally used to make clear clamshell containers, cups, plates, straws, lids and utensils.

PREPARED FOOD Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, bottled, frozen, squeezed or otherwise prepared on the food establishment's premises within the Town, regardless of whether it is consumed on or off the premises.

RECYCLABLE Material that can be sorted, cleansed, and reconstituted using the Brookline curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

RETAIL ESTABLISHMENT Any commercial business 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 will be used more than once in its same form by a food establishment. Reusable food service ware includes: tableware, flatware, food or beverage containers, packages or trays, such as, but not limited to, soft drink bottles and milk containers that are designed to be returned to the distributor and customer that is provided take-out

containers. Reusable materials include aluminum and glass. Reusable also includes cleanable durable containers, packages, or trays used on-premises or returnable containers brought back to the food establishment.

Section 8.32.2: PROHIBITED USE AND DISTRIBUTION OF FOOD WARE AND PACKAGING

(a) Effective January 1, 2020, Food establishments are prohibited from providing prepared food to customers using polystyrene or polyvinyl chloride food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (a).

(b) Effective January 1, 2020, Food establishments using any disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (b). All food establishments are strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

(c) Retail establishments and caterers are prohibited from selling or distributing foam polystyrene food service ware to customers.

(d) Retail establishments are prohibited from selling or distributing polystyrene foam packing material to customers.

(e) Effective January 1, 2020, Food Establishments are prohibited from providing prepared food to customers using any food service ware made of polyethylene terephthalate. Catering orders provided by Caterers shall be exempt from the provisions of this paragraph (e).

Section 8.32.3: EXEMPTIONS

(a) Foods prepared or packaged outside the Town are exempt from the provisions of this chapter.

(b) Food establishments and retail establishments will be exempted from the provisions of this Article for specific items or types of disposable food service ware if the Department of Health Director or designee finds that a

suitable biodegradable, compostable, reusable, or recyclable alternative does not exist for a specific application and/or that imposing the requirements of this chapter on that item or type of disposable food service ware would cause undue hardship to the establishment.

(c) Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Department of Health Director or designee. The Department of Health Director or designee may waive any specific requirement of this chapter for a period of not more than one year if the establishment seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an "undue hardship" is a situation unique to the food establishment where there are no reasonable alternatives to the use of disposable food service ware and compliance with this provision would cause significant economic hardship to that food establishment. An establishment granted an exemption must re-apply prior to the end of the one-year exemption period and demonstrate continued undue hardship if the establishment wishes to have the exemption extended. The Health Department Director's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

Section 8.32.4: PENALTIES AND ENFORCEMENT

(a) Each Food or Retail establishment as defined above, operating in the Town of Brookline shall comply with this by-law.

(1) If it is determined that a violation has occurred the Department of Health Director shall issue a warning notice to the Food or Retail establishment for the initial violation.

(2) If an additional violation of this by-law has occurred within one year after a warning notice has been issued for an initial violation, the Department of Health Director shall issue a notice of violation and shall impose a penalty against the Food or Retail establishment.

(3) The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

A) \$50 for the first offense

B) \$100 for the second offense and all subsequent offenses.

Payment of such fines may be enforced through civil action in the Brookline District Court as provided in Article 10.3 of the Town's General By-laws.

(4) No more than one (1) penalty shall be imposed upon a Food or Retail establishment within a seven (7) calendar day period.

(5) A Food or Retail establishment shall have fifteen (15) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 8.32.5: SEVERABILITY

If any provision or section of this By-law 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 by-law, which shall remain in full force and effect.

Section 8.32.6: EFFECTIVE DATE

The provisions of this By-law shall take effect on January 1, 2019, except the provisions of Section 2(a), 2(b) and 2(e), which shall take effect on January 1, 2020.