



Crafting a Local Ordinance to Limit Single-use Foam Food Containers

A Guide from the Natural Resources Council of Maine

Congratulations on your efforts to reduce litter and waste by limiting single-use expanded or extruded polystyrene (EPS) foam food containers in your community. Due to its prevalence in our communities and lightweight nature, EPS foam has become a very common and problematic form of plastic pollution in our environment. In Maine, virtually all EPS foam is destined to become waste because it is not economically viable to recycle it here. That's why many Maine communities have already adopted foam ordinances.

To succeed in crafting and passing a foam ordinance, it is important to gather feedback and garner support for its provisions early in the process, and be clear on the intent before drafting the language. It is also helpful to discuss the ideal outcome within your group, and be flexible to meet the needs of your community and decision makers if needed to be successful. These questions can help guide your group through the process.

What is the Purpose of the Ordinance?

It is important to clearly articulate the goals of your proposed EPS foam ordinance. For instance, some groups approach foam ordinances as a way to reduce plastic litter, but also to prevent unrecyclable foam from contaminating the recycling stream. Some are concerned that EPS foam containers may leach toxic chemicals into food and beverages. For those reasons, the primary goal is typically to stop the use of this type of material. It's

important to *stay focused* on your primary goal as you work through your discussions.

As with single-use plastic bag ordinances, NRCM believes that ultimately people should be encouraged to reduce their use of plastics rather than switch from one kind of disposable plastic to another. Educating neighbors about dining in or bringing reusable takeout food containers is an important step in reducing plastic pollution. But, the ultimate purpose should be to eliminate the use of EPS foam in the community. Switching to locally recyclable or compostable alternatives is at least a step in the right direction.

Will the Town Dictate What the Alternatives to EPS Foam Will Be?

People sometimes get stuck debating these specifics of an EPS foam ordinance. Most people can agree that EPS foam is bad, and that we do not want to swap that material out for another problematic material. As a group, you will need to decide if the town will want to legally specify which types of material can be used for food and beverage containers in the policy, or if just "not EPS foam" is adequate.

NRCM believes that it is most important to ban EPS foam, and that any alternatives would ideally be reusable and/or locally recyclable or compostable. There are many types of materials that fit those criteria, which makes it

difficult to come up with a proper list of alternatives and complicates the ordinance. It may be best just to ban foam in the ordinance, and to provide a separate list of preferred products businesses might use as alternatives. Some towns coordinate bulk-purchasing initiatives to keep costs down for local businesses. NRCM encourages communities to support their local businesses with alternative product information during this transition.

How Do You Decide Which Uses of EPS Foam Will Be Banned?

Most foam ordinances in Maine target disposable food and beverage containers and in-store packaging or all food establishments (restaurants, grocery stores, take-out, etc.). However, EPS foam is used to package many kinds of products, such as electronics and appliances. Those products are typically excluded from ordinances because those items are usually packaged outside of the state of Maine. Some towns make exceptions for packaging and shipping of raw seafood.

What Establishments in the Town Will Be Affected by the Ordinance?

EPS foam bans generally affect food packagers and retailers that serve or sell food. Bans often include city/town departments and temporary events, such as at farmers markets or city functions. Some towns have a hard time deciding whether or not to include food pantries or churches in their restricted uses. Ordinances sometimes identify which stores to include based on a percentage of sales (e.g. 2%) that are attributed to food sales. NRCM generally advocates that the ban applies across the board because it is more equitable, and because of the pervasive and problematic nature of this specific kind of material.

Will the Town Restrict the Retail Sale of EPS Foam Food Containers in Your Community?

Some towns only restrict the use of EPS foam for food and beverages sold in the business, but a customer could still come and purchase a package of EPS foam cups, plates, or bowls to use at home or work. With Maine's longstanding

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Sample EPS Foam Food Container Ordinance Language

PURPOSE

It is in the best interests of the Town of X to protect the environment and our local economy by prohibiting the distribution and use of expanded and extruded polystyrene (EPS) foam food containers and packaging, and encouraging use of reusable, recyclable, or compostable alternatives.

The provisions in this Ordinance will:

- a) Reduce litter of EPS foam in our environment
- b) Reduce taxpayer expense to clean up or manage EPS foam litter
- c) Reduce the impact of EPS plastic litter on our local tourism and fishing economy
- d) Reduce waste from EPS foam
- e) Reduce EPS foam contamination of our local recycling streams

AUTHORITY

This Section is enacted under the Home Rule Authority of municipalities pursuant to the Constitution of the State of Maine, Ordinance VIII, Part 2, Section 1, the provisions of Title 30-A M.R.S. Section 3001 et. seq, as well as the general powers of municipalities to enact ordinances.

DEFINITIONS

Food packager means any person 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 that 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 include raw uncooked meat or eggs. Prepared food may be eaten either on or off premises.

EPS foam means and includes blown polystyrene and expanded and extruded foams, which 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). EPS foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, and egg cartons.

Store means all retail establishments, including but not limited to convenience stores, restaurants, grocery stores, delicatessens, and sellers of merchandise and dry goods sold to the ultimate consumer for direct use or consumption and not for resale.

Food Distributer includes food pantries, churches, seasonal or temporary businesses like fairs or farmers markets, and catered events.

PROHIBITIONS

- a) No Store or Food Distributer shall serve or sell prepared food or beverage in EPS foam containers and shall not package meat, eggs, bakery products, or other food in EPS foam containers.
- b) No Store, Food Distributer, or Food Packager shall package meat, eggs, bakery products, or other food in EPS foam containers.
- c) No Store that sells tangible personal property at retail shall sell EPS foam food or beverage containers.
- d) The town shall not use EPS foam food or beverage containers at any town facility or town sponsored event.
- e) No town department or facility shall purchase or acquire EPS foam food or beverage containers.
- f) All parties who contract with the town shall be prohibited from using EPS foam food and beverage containers in town facilities or on town-funded projects within the town.

EXEMPTIONS

- a) A Store or Food Distributer shall be exempt from the provisions of this Ordinance in a situation deemed by the Town Manager to be an emergency for the immediate preservation of the public health or safety.
- b) Nothing in this Ordinance shall be construed to prohibit customers from using bags or food and beverage containers of any type that the customer brings into the Store for their own use or from carrying away from the Store.
- c) Stores or Food Distributers that receive items, pre-packaged in EPS food or beverage containers, packaged outside the town, may re-sell such items without repackaging those items.

ENFORCEMENT AND PENALTIES

The Town Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Ordinance. If the Town Manager or his/her designee(s) determines that a violation of this Ordinance has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Ordinance shall be subject to the penalties set forth below. Violations of this Ordinance shall be 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.

SEVERABILITY

Each provision of this Ordinance shall be deemed independent of all other provisions herein. If any provision of this Ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable.

EFFECTIVE DATE

The provisions of this Ordinance shall become effective on XX/XXXX



home-rule tradition, it is legal to restrict the sale of products in your municipality. NRCM believes that EPS is such a problematic, toxic material that has no destination other than the trashcan, so we encourage communities to also ban the retail sale of these products.

Is It Better to Impose a Ban or a Fee?

It's standard to place a ban on EPS foam, rather than a fee. This approach is the most effective at eliminating this unrecyclable and hard to clean up material. However, we think that placing a fee on any take-out containers and cutlery, etc. would be a great way to encourage people to bring in reusable alternatives from home.

How Will the Ordinance be Enforced?

The ordinance must address who will be responsible for enforcement and set the penalties for non-compliance.

Typically it would be up to the City or Town Manager to designate the municipal employees who have the primary responsibility for enforcement. The enforcers who find a violation could send an initial warning notice, and then establish increasing fines for each subsequent violation. You can also encourage residents to report to the City Manager when they find that a business is not complying with the ordinance.

Will There be Exemptions?

Exemptions are typically only applied during emergency situations, but each ordinance can include its own list of exemptions as you deem necessary. See the draft ordinance language provided for a list of exemptions that your group could consider.

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