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AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 12 GARBAGE, WASTES AND JUNK  
ARTICLE V. POLYSTYRENE  
SECTIONS 12-210 THROUGH 12-215

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 12, Sections 12-210 thru 12-215 of the Portland  
City Code is hereby enacted as follows:*

**12-210. Findings; purposes.**

~~WHEREAS, the Council finds that~~The city council hereby finds  
as follows:

- (1) Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.~~;~~and
- (2) The City of Portland desires to protect the natural environment.~~;~~and
- (3) There is no economically feasible means of recycling expanded polystyrene locally.~~;~~and
- (4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs.~~;~~and
- (5) Expanded polystyrene 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.~~;~~and
- (6) The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.~~;~~and
- (7) Such alternatives are readily available.;

**12-211. Definitions.**

As used in this Ordinance the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food

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service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

- (b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) 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). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."
- (c) "Food packager" means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.
- (e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (f) "Restaurant" means any establishment located within the City of Portland selling prepared food to be

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eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.

- (g) "Retail Food Vendor, Vendor" means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.~~person, restaurant, store, shop, sales outlet or other establishment, including, without limitation, a grocery store, convenience or variety store or a delicatessen located within the City of Portland which sells prepared food.~~

### 12-212. Polystyrene prohibited Prohibitions. (Or "Expanded Polystyrene Prohibited")

1. On and after ~~January 1, 2014~~July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after ~~January 1, 2014~~July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after ~~January 1, 2014~~July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

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6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

### **12-213. Exemptions.**

A. Prepackaged food is exempt from the provisions of this chapter.

B. Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the ~~City Manager~~Public Services Manager or his/her designee 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.

C. Food vendors, City departments, City facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

### **12-214. Violations and Enforcement.**

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor 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:

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

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

### **12-215. Severability.**

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, 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 Ordinance are severable.