

Excerpted from The Town of Amherst Current General Bylaws, June 2013. To view the entire document visit:
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**BAN OF EPS FOAM IN FOOD ESTABLISHMENTS
AND TOWN FACILITIES
(STM – November 19, 2012 - Art. 9)**

SECTION 1 PURPOSE

This bylaw is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the Town.

SECTION 2 EFFECTIVE DATE

This bylaw shall take effect on January 1, 2014.

SECTION 3 FINDINGS

Expanded polystyrene food containers form a significant portion of the solid waste stream going into our landfills. Local landfills are running out of room; our future solid waste may have to be transported hundreds of miles to a landfill at considerable cost.

Expanded polystyrene food containers are not recyclable, nor are they biodegradable. Once buried in our landfills, they will persist for centuries.

Styrene, the key ingredient in expanded polystyrene, was recently added to the National Toxicology Program's list of carcinogens (U.S. Department of Health and Human Services). Styrene can leach from polystyrene containers into food and beverages.

Many communities in the United States have banned expanded polystyrene food containers, including Seattle WA, Freeport Maine, Great Barrington MA and Nantucket MA.

Approximately 60% of Amherst food establishments have already stopped using expanded polystyrene food containers.

University of Massachusetts/Amherst, Amherst College, and Hampshire College food services have eliminated single-use expanded polystyrene food containers from their dining halls.

Appropriate alternative products are readily available from the vendors used by local food establishments; cooperative bulk buying arrangements are possible.

Thus, elimination of expanded polystyrene food containers is in the best interest of the health and welfare of Town inhabitants.

SECTION 4 DEFINITIONS

“Disposable Food Service Container” means single-use disposable products 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. This definition does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

“Food Establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. 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 bylaw.

“Expanded Polystyrene” (EPS) means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam.

“Polystyrene” means expanded polystyrene which is a thermoplastic petrochemical material 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, form molding, and extrusion-blow molding (extruded foam polystyrene). The term “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene”.

“Prepared Food” means any food or beverage prepared for consumption on the Food Establishment’s premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation.

“Town Facility” means any building, structure, land or park owned or operated by the Town of Amherst, its agents and departments.

“Town Facility Users” means all persons, societies, associations, organizations or special event promoters who require a permission to use a Town Facility. Town Facility Users also includes concession contracts with the Town, Town-managed concessions, Town-sponsored events and food services provided at the Town’s expense.

SECTION 5 PROHIBITION

A. Except as provided herein, Food Establishments are prohibited from dispensing Prepared Food to customers in Disposable Food Service containers made from Expanded Polystyrene.

B. Town Facility Users are prohibited from dispensing Prepared Food to customers in Disposable Food Service containers made from Expanded Polystyrene.

SECTION 6 DEFERMENTS

A. Upon written application, the Board of Health, after a public hearing, may defer application of this Bylaw for a Food Establishment for a one year period, upon a showing by the Food Establishment that the conditions of this Bylaw would cause undue hardship. For purposes of this Bylaw, an “undue hardship” is a situation unique to the Food Establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that Food Establishment.

B. A Food Establishment granted a deferment by the Town must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.

C. A deferment granted in accordance with this Section may be extended for no more than one additional one year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

D. A deferment application shall include all information necessary for the Town to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.

E. The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the public health and further the interests of this Bylaw.

F. Deferment decisions are effective immediately and final.

SECTION 7 ENFORCEMENT

A. The Health Department or its designee shall inquire on an annual basis regarding any food establishment’s compliance with this bylaw as a condition for renewal of the establishment’s food service permit.

B. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this bylaw.

C. The Health Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Health Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor’s premises to verify compliance in accordance with applicable law.

D. The Health Department may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Health Department shall not preclude enforcement through any other lawful means.

E. Penalties and Fines for Violations

Violations of this ordinance may be enforced as follows:

1. This bylaw shall be enforced by the Health Department or its designee, including the Department of Public Works. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to the following penalties:

For the first violation, the Health Department or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the food establishment which will specify the violation and the appropriate penalties in the event of future violations.

Thereafter, the following penalties shall apply:

(a). A fine of one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.

(b). A fine of two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.

2. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

3. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars.

PUBLIC WORKS

1. Disturbing Highway Surface or Curbing (STM - November 3, 1969 - Art. 17)

No person shall make any excavation in any public way, disturb its curbing or pavement, pave any unpaved portion thereof, or remove earth or gravel therefrom, without first obtaining a written permit therefor from the town manager, and no person who has received such a permit shall violate any restrictions or conditions contained therein.

2. Driveway Entrance Permits STM - November 3, 1969 - Art. 17)