



## Southampton Town Board

116 Hampton Road  
Southampton, NY 11968

Meeting: 02/12/19 01:00 PM

Department: Town Attorney

Category: Local Laws

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Initiator: James Burke

Sponsors: Lofstad, Schneiderman, Scalera, Bouvier, Schiavoni

DOC ID: 31018

**ADOPTED**

### **TOWN BOARD RESOLUTION 2019-203**

## **Resolution of Adoption: Amend Chapter 212 to restrict Polystyrene and Plastic Straws and Stirrers**

WHEREAS, the Town Board of the Town of Southampton is considering amending Chapter 212 (Retail Checkout Bags) in order to include restrictions on expanded polystyrene, plastic straws and stirrers; and

WHEREAS, a public hearing was held on January 22, 2019 and February 12, 2019, at which time all persons either for or against the enactment were heard; and

WHEREAS, the proposed amendment to Chapter 212 of the Southampton Town Code is a Type II Action pursuant to the New York State Quality Review Act (SEQRA) and Chapter 157 of the Southampton Town Code and that no further environmental review is necessary; now therefore be it

RESOLVED, that Local Law No. 4 of 2019 is hereby adopted as follows:

#### LOCAL LAW NO. 4 of 2019

A LOCAL LAW amending Town Code Chapter 212 (Retail Checkout Bags) to include restrictions on expanded polystyrene, plastic straws and stirrers.

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

#### **Section 1. Legislative Intent.**

Polystyrene foam (expanded polystyrene), commonly referred to as "styrofoam," is a petroleum-based plastic made from the styrene monomer. Styrene has been identified as a potential human carcinogen by the United States Department of Health and Human Services and the International Agency for Research of Cancer. The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA) have all set styrene exposure levels (EPA-drinking water, FDA-bottled water, and OSHA-workplace air).

Polystyrene foam is used in a number of common food container products. The substance has historically been difficult and costly to recycle and poorly biodegradable. Most of the polystyrene foam that ends up in landfills will be there 500 years from now. Polystyrene foam can also be very toxic when burned. It is often found among common litter in the Town or in landfills throughout the region. Because of the nature and ubiquity of polystyrene foam, it can threaten animal and human health. For the reason stated above, the Town of Southampton seeks to ban the use of certain polystyrene items.

Plastics synthesized from petroleum and natural gas do not biodegrade. Even with the emergence of bioplastics, which are derived from renewable biomass sources, such as plants and microorganisms, there is no certified type of bioplastic that biodegrades in a marine environment.

Littered plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. Plastic straws and stirrers, due to their size and weight, are very difficult to recycle.

The Town of Southampton confronts large quantities of littered plastic, including plastic straws, stirrers, and cutlery. Plastic straws, stirrers, and cutlery are generally made from polystyrene or polypropylene. In response to the above findings, the Town of Southampton shall require that all Food Service Establishments and Beverage Providers shall provide straws and stirrers only upon request and that those straws and stirrers shall be made of non-plastic material.

## **Section 2. Amendment.**

Town Code Chapter 212 (Retail Checkout Bags) is hereby amended by adding the underlined words as follows:

## **Chapter 212: Retail Checkout Bags, Expanded Polystyrene, Plastic Straws and Stirrers**

### **§ 212-1 Definitions.**

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

#### **BEVERAGE PROVIDER**

Any business, organization, entity, group, or individual that offers liquid, slurry, frozen, semi-frozen, or other forms of beverages to the public for consumption.

#### **CHECKOUT BAG**

A carryout bag that is provided to a customer at the point of sale. The term "checkout bag" does not include plastic produce bags or plastic bags measuring 28 inches by 36 inches or larger in size.

#### **EXPANDED POLYSTYRENE**

Blown polystyrene and expanded and extruded foams 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 foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Such term shall not include rigid polystyrene.

#### **FOOD SERVICE ESTABLISHMENT**

A premises or part of a premises where food is provided directly to the consumer, whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. Food service establishment shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, bakeries, delicatessens, take-out food stores, coffee shops, grocery stores, vending trucks or carts and cafeterias.

**MANUFACTURER**

Every person, firm or corporation that:

- A. Produces expanded polystyrene or polystyrene loose fill packaging that is sold or distributed in the Town; or
- B. Imports expanded polystyrene or polystyrene loose fill packaging that is sold or distributed in the Town.

**MOBILE FOOD COMMISSARY**

Any facility that:

- A. Disposes of solid waste generated by the operation of a food service establishment that is located in or is a pushcart, stand or vehicle; or
- B. Supplies potable water and food, whether pre-packaged or prepared at the mobile food commissary, and supplies nonfood items.

**PLASTIC PRODUCE BAG**

A flexible container made of very thin plastic material with a single opening that is used to transport produce, meats or other items selected by the customers to the point of sale.

**PLASTIC STRAW**

A disposable tube made predominantly of plastic derived from either petroleum or a biologically based polymer, such as corn or other plant sources, used to transfer a beverage from a container to the mouth of the person drinking the beverage. "Plastic straw" does not include a straw made from non-plastic materials, including, but not limited to, paper, pasta, sugar cane, wood, or bamboo.

**PLASTIC STIRRER**

A device that is used to mix beverages, intended for only one-time use, and made predominantly of plastic derived from a petroleum polymer or a biologically based polymer, such as corn or other plant sources.

**POLYSTYRENE LOOSE FILL PACKAGING**

A void-filling packaging product made of expanded polystyrene that is used as a packaging fill, commonly known as packing peanuts.

**RECYCLABLE PAPER BAG**

A paper bag that should have the following characteristics:

- A. Is 100% recyclable overall; and
- B. Displays the word "Reusable" or "Recyclable" on the outside of the bag.

**RETAIL SALES**

The transfer to a customer of goods in exchange for payment occurring in retail

stores, sidewalk sales, farmer's markets, flea markets and restaurants. The term "retail sales" does not include sales of goods at yard sales, tag sales, other sales by residents at their home and sales by nonprofit organizations.

**REUSABLE BAG**

A bag with handles that is specifically designed and manufactured for multiple reuse and is:

- A. Made of cloth or other fabric; and/or
- B. Made of durable plastic that is at least 2.25 mils thick.

**SINGLE SERVICE ARTICLES**

Cups, containers, lids, closures, trays, plates, knives, spoons, stoppers, paddles, straws, place mates, napkins, doilies, wrapping materials, toothpicks and all similar articles that are intended by the manufacturer to be used once for eating or drinking or that are generally recognized by the public as items to be discarded after one use.

**STORE**

A retail or wholesale establishment other than a food service establishment.

**§ 212-2      Restriction on checkout bags.**

- A. Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers.
- B. Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.
- C. Operative Date. The restriction set forth in § 212-2A shall become operative on April 22, 2015 (Earth Day), so as to allow retail establishments a period of time within which to dispose of their existing inventory of plastic checkout bags and convert to alternative packaging materials.

~~§ 212-3      **Operative date.**~~

~~The restriction set forth in § 212-2A shall become operative on April 22, 2015 (Earth Day), so as to allow retail establishments a period of time within which to dispose of their existing inventory of plastic checkout bags and convert to alternative packaging materials.~~

~~§212-3      **Restriction on expanded polystyrene.**~~

- A. No food service establishment, mobile food commissary, or store shall possess, sell, or offer for use single service articles that consist of expanded polystyrene, including, but not limited to, providing food in single service articles or containers that consist of expanded polystyrene. This subsection shall not apply to:
  - (i) Expanded polystyrene containers used for prepackaged food that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store; or

- (ii) Expanded polystyrene containers used to store raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail appliance.
- B. No manufacturer or store shall use or offer for sale polystyrene loose fill packaging or coolers made of expanded polystyrene in the Town.
- C. The restrictions set forth in § 212-3 (A) through (B) shall become operative on May 8, 2019, so as to allow retail establishments a period of time within which to dispose of their existing inventory of polystyrene items and convert to alternative packaging materials.

**§212-4 Restriction on Straws and Stirrers.**

- A. All Food Service Establishments and Beverage Providers in the Town of Southampton shall provide straws and stirrers only upon request.
- B. All straws and stirrers provided shall be made of non-plastic materials.
- C. In accordance with the Americans with Disabilities Act, Food Service Establishments and Beverage Providers may possess up to 20 plastic straws for use only by persons who specifically require them.
- D. Operative Date. The restriction set forth in 212-4 (A) through (C) shall become operative on May 8, 2019, so as to allow retail establishments a period of time within which to dispose of their existing inventory plastic straws.

**§ 212-4§212-5 Penalties for offenses.**

Any person committing an offense against any provision of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

**Section 3. Authority.**

The proposed local law is enacted pursuant to Town Law §§130(1), 130(3-a), and 130(15), as well as Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(11), 10(1)(ii)(a)(12), and 10(1)(ii)(d)(3).

**Section 4. Severability.**

If any section or subsection, paragraph, clause, phrase, or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole, or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

**Section 5. Effective Date.**

This local law shall take effect on May 8, 2019 or upon filing with the Secretary of State, whichever is later, so as to allow retail establishments a period of time within which to dispose of their existing inventory of polystyrene items, plastic straws and stirrers and convert to alternative materials.

AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby directed to publish the following Notice of Adoption:

**NOTICE OF ADOPTION**

PLEASE TAKE NOTICE that, after a public hearing was held by the Town Board of the Town of Southampton on January 22, 2019 and February 12, 2019, the Town Board, at their meeting of February 12, 2019, adopted LOCAL LAW NO. 4 OF 2019 as follows: "A LOCAL LAW amending Town Code Chapter 212 (Retail Check out Bags) to include restrictions on expanded polystyrene, plastic straws and stirrers."

Summary of Proposed Law

Littered polystyrene and plastic products have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs. Certain items made from these material are difficult to recycle and do not biodegrade. The proposed law will prohibit the use of single service articles made of expanded polystyrene in certain establishments, prohibit the use or sale of loose polystyrene packaging fill and coolers made of polystyrene, ban the use of plastic straws and stirrers by certain establishments, and require that all food service establishments and beverage providers only provide non-plastic straws and stirrers upon request.

Copies of the local law, sponsored by Councilwoman Lofstad, are on file in the Town Clerk's Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m.

BY ORDER OF THE TOWN BOARD  
TOWN OF SOUTHAMPTON, NEW YORK  
SUNDY A. SCHERMEYER, TOWN CLERK

**Financial Impact**

None; see resolution text.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Julie Lofstad, Councilwoman
<b>SECONDER:</b>	John Bouvier, Councilman
<b>AYES:</b>	Schneiderman, Lofstad, Scalera, Bouvier, Schiavoni