December 17th, 2014

Proposed Amendments

After discussions with stakeholders, I am proposing the following amendments (I have redrafted or deleted certain language in the ordinance to be consistent with these proposed amendments):

1. The title of the ordinance has been slightly changed.
2. Section 1.4 eliminated the exemption from the ordinance businesses under 2,000 feet for two reasons: 1) it creates a burden of mandating the city create an inventory of applicable businesses 2) Fairness: it should apply equally and even small businesses contribute to the issue.
3. Sections 21. and 2.3: the reusable bag definition has gone from 3 mils to 1.5 mils. This thickness is consistent with the California plastic bag ban state law, and gives business owners more flexibility with regard to substitutes.
4. Section 3.1: amended as per the recommendations of Solicitor Seewald.
5. Section 3.2: deleted.
6. Section 4.3: deleted.
7. Date of effect, Section 6.1, changed from November 1st, 2016 to January 1st, 2016.
8. References to "City" have been changed to the "Board of Health" in section 7.
9. Section 7.1: hardship deferment periods have gone from 1 year to 6 months.

These proposed amendments will be presented at the Committee on Economic and Community Development, Housing and Land Use tonight.

Respectfully Submitted,

Jesse Adams
City Councilor at Large
City Council Vice President

Paul Spector
Ward 2 City Council

City of Northampton
MASSACHUSETTS

ORDINANCE §272-18

An ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by revising section §272-18 of said Code; providing that ENVIRONMENTAL PROTECTION AND SOLID WASTE REDUCTION.

In the Year Two Thousand and Fourteen

UPON THE RECOMMENDATION OF Councilor Jesse M. Adams and Councilor Paul D. Spector

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows:

Section 1: That section §272-18 of the Code of Ordinances of the City of Northampton, Massachusetts, be amended so that such section shall read as follows:

Section §272-18 ENVIRONMENTAL PROTECTION AND SOLID WASTE REDUCTION.

BE IT ORDAINED AS FOLLOWS:

Section 1 General Definitions.

1.1 Compostable Packaging – shall mean packing that is made of material that conforms to the current American Society for Testing and Materials International D6400 for compostability.

1.2 Biodegradable Packaging - shall mean packaging other than plastic or styrofoam which composts into beneficial breakdown components.

1.3 Recyclable - Material that can be sorted, cleansed, and reconstituted using available recycling 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.

1.4 Retail Establishment - shall mean all sales outlets, stores, shops, pharmacies or other places of business located within the City of Northampton which sell or convey merchandise directly to the ultimate consumer.

1.5 Retail Food Establishment - shall mean all sales outlets, stores, shops, restaurants, markets, supermarkets, clubs or other places of business which sell,

serve or convey foods directly to the ultimate consumer. This definition shall include but is not limited to any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, sold or offered to the public; similar places in which food or drink is prepared for sale or service on the premises or elsewhere; and any other establishment or operation, including in-home caterers, where food is processed, prepared, stored, served or provided for the public regardless of whether there is a charge for the food.

1.6 Retail Service Establishments - shall mean all places of business located within the City of Northampton where a service, specialized or professional work, is offered to the public regardless of whether there is a charge for the service.

1.7 Merchandise - shall mean products that are purchased in the retail stores.

1.8 ASTM – shall mean a testing standard developed by the American Society for Testing and Materials.

Section 2 Shopping Bag Definitions.

2.1 "Thin-film single-use plastic bags" are bags with a thickness of 1.5 mils or less and are intended for single-use transport of purchased products.

2.2 "Biodegradable bags" are bags that: 1) contains no polymers derived from fossil fuels; and 2) is intended for single use and will decompose in a natural setting to an environmentally beneficial material at a rate comparable to other biodegradable materials such as paper, leaves, and food waste.

2.3 "Reusable bags" are bags that have a thickness greater than 1.5 mils and is specifically designed for multiple use and is made of thick recyclable plastic, cloth, fabric or other durable materials that do not decompose into harmful chemical components. A reusable bag may recyclable or compostable and is specifically designed and manufactured for multiple reuse.

2.4 "Compostable plastic bags" are plastic bags that (1) conforms to the current American Society for Testing and Materials International D6400 for compostability; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) conforms to any other standards deemed acceptable by this section.

Section 3 General Prohibition and Regulation.

3.1 No retail establishment, retail food establishment, or retail service establishment as defined in sections 1.4, 1.5 and 1.6, respectively, shall sell or convey merchandise to ultimate consumers in thin-film single-use plastic bags and shall only use such

bags that are: 1) Reusable bags; or 2) Biodegradable bags: or 3) Compostable plastic bags.

Section 4 Exemptions.

Section 3 of this regulation shall not apply to the following items:

4.1 Thin-film plastic bags used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items and other similar merchandise, typically without handles;

4.2 Any flexible transparent covering for uncooked or raw meat, poultry, raw fish, hard cheese, cold cuts, fruit, and vegetable products, baked goods, or bread;

Section 5 Penalties and Enforcement.

5.1 If it is determined that a violation of any section of this ordinance has occurred the Health Department or its designee shall issue a warning notice for the initial violation.

5.2 If an additional violation of this ordinance has occurred within one year after a warning notice has been issued for an initial violation, the Health Department or its designee shall issue a notice of violation and shall impose a penalty against the retail establishment.

5.3 The penalty for each violation that occurs after the issuance of the warning notice shall be no more than: 1) $50 for the first offense; 2) $100 for the second offense and all subsequent offenses. Payment shall be made within twenty-one days to the City Clerk. Non-payment of such fines may be enforced through civil action in the Northampton District Court. No more than one (1) penalty shall be imposed upon a Retail Establishment within a seven (7) calendar day period.

5.4 Violaters shall have twenty-one (21) calendar days after the date that a notice of violation is issued to pay the penalty.

Section 6 Date of Effect.

6.1 This ordinance will take effect on January 1st, 2016.

Section 7 Hardship Deferments.

7.1 Upon written application, the Health Department, after a public hearing, may defer application of any section of this ordinance for a six month period after the effective date stated in Section six (6) of this ordinance upon a showing of hardship. Hardship will be found when: 1) compliance with any section of this ordinance

would cause significant economic difficulty; 2) there is no readily available compliant substitute.

7.2 Any entity granted a deferment by the Health Department must reapply prior to the end of the six month 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 six months.

7.3. A deferment granted in accordance with this section may be extended for no more than two additional six month periods, upon written application to the Health Department at least two months prior to the expiration of the prior deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

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

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

7.6 Deferment decisions are effective immediately and final.

Section 8 Severability and ordinance numbering.

Any word, term, or section deemed illegal for any reason may be severed from this ordinance without affecting viability of the whole.

The remaining sections in Article II Integrated Solid Waste Management shall be renumbered to 272-19 through 272-23.