

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 SOLID WASTE REDUCTION AND ENVIRONMENTAL PROTECTION.

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 SOLID WASTE REDUCTION AND ENVIRONMENTAL PROTECTION.

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 or other places of business located within the City of Northampton which sell or convey merchandise directly to the ultimate consumer and satisfies at least one of the following requirements: (a) a retail space of 2,000 square feet or larger or at least two locations under the same name within the City of Northampton that total 2,000 square feet or more; or (b) a retail pharmacy with at least two locations under the

same ownership within the City of Northampton; or (c) a full-line, self-service supermarket which sells a line of dry grocery, canned goods or nonfood items and some perishable items.

1.5 Retail Food Establishment - shall mean all sales outlets, stores, shops, restaurants, clubs or other places of business greater than 2,000 square feet 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 Prepared Food - shall mean 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.

1.9 Disposable Food Service Container - shall mean 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.

1.10 Polystyrene - shall mean 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".

1.11 Expanded Polystyrene (EPS) - shall mean polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

1.12 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 3.0 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 has a thickness greater than 3.0 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 is 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 above the defined sizes in sections 1.4, 1.5 and 1.6 located and doing business within the City of Northampton shall sell or convey merchandise to ultimate consumers within the City of Northampton at the conclusion of any sales transaction which takes place on the premises of such retail establishment at or near a sales counter or equivalent customer purchasing station but prior to removal of such merchandise from the premises of such retail establishment 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.

3.2 No retail food establishment as defined in section 1.5 located and doing business within the City of Northampton shall give, sell, provide, or dispense Prepared Food to Customers in Disposable Food Service containers made from Expanded Polystyrene. Food containers given, sold, provided or dispensed to any customer within the City of Northampton must be composed of biodegradable and compostable materials.

Section 4 Exemptions.

Sections 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;

4.3 Any food packaging used during direct patient care at hospitals or nursing homes;

4.4 Any plastic covers, covering materials, or lids that are not replaceable by biodegradable substitutes;

4.5 Any other packaging that is non-biodegradable for which there is no available substitute, so that a "hardship" is found by the method described in section 7 below.

4.6 Any bags which were purchased by the retail establishments prior to passage of this ordinance. Proof of the date of purchase of such packaging must be presented upon request.

4.7 Single use utensils.

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 Director 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 Violators 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 November 1st, 2016.

Section 7 Hardship Deferments.

7.1 Upon written application, the Board of Health, after a public hearing, may defer application of any section of this ordinance for a one year 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 City 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.

7.3. A deferment granted in accordance with this section may be extended for no more than two additional one year periods, upon written application to the Board of Health 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 for the City 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.

7.5 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 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.