

ORDINANCE NO. 2018-19

**ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 143
"FOOD ESTABLISHMENTS" OF THE CODE OF THE BOROUGH OF LEONIA
BY ADDING §143-8 TO RESTRICT THE SALE AND USE OF POLYSTYRENE
FOAM DISPOSABLE FOOD SERVICE WARE PRODUCTS**

WHEREAS, the Mayor and Council of the Borough of Leonia in the County of Bergen has the power to protect the health, safety and welfare of the community, including the ability to protect and enhance the natural environment; and

WHEREAS, due to the physical properties of polystyrene foam, the United States Environmental Protection Agency (EPA) states, "that such materials can also have serious impacts on human health, wildlife, the aquatic environment and the economy"; and

WHEREAS, polystyrene foam contains styrene, a known neurotoxin and suspected carcinogen, which can leach from polystyrene foam disposable food service ware into food and drink, which potentially threatens human health; and

WHEREAS, the general public is not typically warned of any potential hazard with polystyrene foam; and

WHEREAS, the use of polystyrene foam has a substantial negative environmental impact including: litter, solid waste generation, and effects on wildlife; and

WHEREAS, according to a 2016 study by NY/NJ Baykeeper, polystyrene foam makes up 38% of all plastic pollution in the Hackensack River; and

WHEREAS, polystyrene foam disposable food service ware is not locally recyclable or compostable, but comparable and easily accessible alternative food ware is recyclable or compostable.

Section 1.

Chapter 143 "Food Establishments" is hereby amended and supplemented by the addition of a new section, §143-8 entitled "Restriction of Sales and Use of Polystyrene Foam Disposable Food Service Ware Products":

**§143-8 RESTRICTION OF SALES AND USE OF POLYSTYRENE FOAM DISPOSABLE
FOOD SERVICE WARE PRODUCTS**

§143-8.1 PURPOSE.

This Ordinance is enacted to restrict the sale and use of polystyrene foam disposable food service ware products and replace the material with recyclable and/or compostable food service

ware products to further protect the public health and safety of the residents, visitors, the environment, waterways, and wildlife, and advance the goal of developing an environmentally-friendly borough.

§143-8.2 DEFINITIONS.

For the purpose of this Ordinance, certain words and phrases are defined as follows:

- (a) "ASTM Standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.
- (b) "Borough" means the Borough of Leonia in the County of Bergen.
- (c) "Borough Facilities" means any building, structure or vehicles owned or operated by the Borough of Leonia.
- (d) "Compostable" means all materials in the product or package are capable of undergoing biological decomposition or otherwise becoming part of a usable compost (e.g., soil conditioning material or mulch) in a safe and timely manner in an appropriate composting program or facility. Compostable Disposable Food Service Ware includes ASTM-Standard bio-plastics or plastic-like products that are clearly labeled, such that any compost collector and processor can easily distinguish the ASTM-Standard compostable plastic from non-ASTM-Standard compostable plastic.
- (e) "Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use; and on or in which any restaurant or retail food vendor directly places or packages prepared foods for consumption. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants or retail food vendors.
- (f) "Distribute" means the sale, offer for sale, or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale, offer for sale, or other transfer of possession of another item for compensation.
- (g) "Food Vendor" means any restaurant or retail food vendor located or operating within the Borough that sells prepared food for consumption on, near, or off its premises. For purposes of this Ordinance, the term includes a restaurant operating from a temporary facility, cart, vehicle or mobile unit.
- (h) "Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, or association.
- (i) "Polystyrene Foam" means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam®, a Dow Chemical Co. 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). Polystyrene Foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

- (j) "Prepared Food" means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor's premises or within the Borough. For the purposes of this Ordinance, prepared food includes food which may be eaten on or off the premises, including "take-out food."
- (k) "Raw Food" means food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise sold on the food vendor's premises or within the Borough. For the purposes of this Ordinance, raw food includes meat, fish, poultry, eggs and vegetables on trays made, in whole or in part, from polystyrene foam either as separate items or as part of the sale to consumers from a refrigerator case or similar retail appliance.
- (l) "Recyclable" means material that can be sorted, cleansed, and reconstituted using recycling services offered in the Borough 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.

§143-8.3 PROHIBITED FOOD SERVICE WARE.

- (a) Food vendors are prohibited from providing prepared food and/or raw food in disposable food service ware that contains polystyrene foam.
- (b) No person may sell, offer for sale, or otherwise distribute within the Borough any disposable food service ware that contains polystyrene foam. There will be a six month phase-in period with requirements for notice and education by the Borough of Leonia.
- (c) All Borough Facilities, Borough-managed concessions, Borough of Leonia sponsored events, and Borough permitted events are prohibited from using polystyrene foam disposable food service ware. This prohibition shall apply to the event organizers, agents of the event organizers, event food vendors and any other party, including nonprofit organizations, who enter into an agreement with one or more of the co-sponsors of the event to distribute prepared food at the event or otherwise provide an event-related service.
- (d) Borough departments are prohibited from purchasing polystyrene foam disposable food service ware.

§143-8.4 REQUIRED RECYCLABLE OR COMPOSTABLE DISPOSABLE FOOD SERVICE WARE.

- (a) All food vendors using any disposable food service ware shall use recyclable or compostable disposable food service ware unless it can be shown that a compostable or recyclable product is not available for a specific application. Food vendors are strongly encouraged to use reusable food service ware in place of using disposable food service ware.
- (b) All disposable food service ware sold, offered for sale, or otherwise distributed within the borough, shall be recyclable or compostable.
- (c) All Borough Facilities, Borough-managed concessions, Borough sponsored events, and Borough permitted events using any disposable food service ware shall use recyclable or compostable disposable food service ware.
- (d) Borough departments using any disposable food service ware shall use recyclable or compostable disposable food service ware.

§143-8.5 EXEMPTIONS.

- (a) Raw or prepared foods prepared or packaged outside the Borough are exempt from the provisions of this Ordinance. Purveyors of food prepared or packaged outside the Borough are encouraged to follow the provisions of this Ordinance.
- (b) Food vendors will be exempted from the provisions of this Ordinance for specific items or types of disposable food service ware if the Borough Administrator or his/her designee, in consultation with the Environmental Commission, determines that a suitable recyclable or compostable alternative does not exist.
- (c) Any person may seek an exemption from the requirements of this Ordinance by filing a request with the Borough Administrator. The Borough Administrator, consistent with this Ordinance and in consultation with the Environmental Commission, may waive any specific requirement of this Ordinance for a period of not more than one year if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. A person granted an exemption must re-apply prior to the end of the one year exemption period and demonstrate continued undue hardship if the person wishes to have the exemption extended. The Borough Administrator's decision, in consultation with the Environmental Commission, to grant or deny an exemption or to grant or deny extension of a previously issued exemption shall be in writing and shall be final. "Undue hardship," shall be construed to include, but not be limited to:
 - (1) Situations where there are no acceptable alternatives to polystyrene foam packaging for reasons which are unique to the applicant;

- (2) Situations where compliance with the requirements of this Ordinance would deprive a person of a legally protected right.

§143-8.6 ENFORCEMENT; NOTICES OF VIOLATION; PENALTIES.

- (a) The Borough Administrator or his/her designee shall have primary responsibility for enforcement of this ordinance. The Borough Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this ordinance, including, but not limited to, inspecting any Vendor's premises to verify compliance.
- (b) If the Borough Administrator or his/her designee determines that a person is in violation of this Ordinance, he/she shall issue a written notice warning of the violation. If, after issuance of such notice, the Borough Administrator finds continued violations of the provisions of this Ordinance, the Borough Administrator may apply for or impose the various sanctions provided in this section.
- (c) Any person violating the provisions of this Chapter shall, upon conviction thereof, be subject to a fine or punishment as set forth in Chapter 1, Article 1 "General Penalty".
- (d) The Borough Administrator may issue an administrative civil liability citation to anyone violating or failing to comply with any of the requirements of this Ordinance, in an amount not exceeding \$100.00 for the first violation, \$200.00 for the second violation in the same year, and \$400.00 for each subsequent violation in the same year.
- (e) The Borough Attorney may seek legal, injunctive, or other equitable relief to enforce this ordinance.
- (f) The remedies and penalties provided in this Section are cumulative and not exclusive of one another.

Section 2. Severability.

If any article, section, sub-section, sentence, clause or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 3. Repealer.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 4. Effect.

This Ordinance will take effect upon publication as required by law, except for §143-8.3 "Prohibited Food Service Ware", which will take effect six (6) months after publication.

Judah Zeigler, Mayor

ATTEST:

Barbara Rae
Interim Borough Clerk