



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 070672
(As Amended, 10/24/07)

Introduced September 20, 2007

Councilmembers Kenney and DiCicco

**Referred to the
Committee on the Environment**

AN ORDINANCE

Enacting a new Chapter 9-3100 of The Philadelphia Code, entitled "Food Service Waste Reduction Ordinance," to prohibit the use of disposable food service ware that contains polystyrene foam and to require the use of biodegradable/compostable or recyclable disposable food service ware by food vendors, city facility food providers, city departments and city contractors and lessees unless there is no affordable alternative; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. A new Chapter 9-3100 of The Philadelphia Code, entitled "Food Service Waste Reduction Ordinance," is hereby enacted, to read as follows:

CHAPTER 9-3100. FOOD SERVICE WASTE REDUCTION ORDINANCE.

§9-3101. Definitions.

(a) "Affordable" means purchasable for not more than 10 percent more than the purchase cost of the available alternative containing Polystyrene Foam.

(b) "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.

City of Philadelphia

BILL NO. 070672, as amended continued

(c) "Biodegradable" means composed of organic material such as plant or animal matter that is capable of being decomposed by microorganisms within a five-year period.

(d) "Compostable" means all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, through a program operated by the City. To qualify as Compostable, Disposable Food Service Ware must meet ASTM-Standards for compostability and any bio-plastic or plastic like product must be clearly labeled, preferably with a color symbol, to allow proper identification such that a compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

(e) "City Contractors and Lessees" means any person or entity that has a contract with the City for public works or improvements to be performed, for a franchise, concession or lease of property, for grant monies or goods or services or supplies to be purchased at the expense of the City or out of trust monies under the control or collected by the City.

(f) "City Facility" means any building, structure or vehicle owned or operated by the City of Philadelphia.

(g) "City Facility Food Provider" means an entity that provides, but does not sell, Prepared Food in City Facilities.

(h) "Department" means the department designated by the Mayor to administer the provisions of this Chapter. Such designation by the Mayor shall occur no later than April 1, 2008.

(i) "Disposable Food Service Ware" means all containers, bowls, plates, trays, carton, cups, lids, straws, forks, spoons, knives, napkins and other items that are designed for one-time use for Prepared Foods, including without limitation, service ware for takeout foods and/or leftovers from partially consumed meals prepared by Food Vendors. The term "Disposable Food Service Ware" does not include items composed entirely of aluminum or polystyrene foam coolers and ice chests that are intended for reuse.

(j) "Food Vendor" means any Restaurant or Retail Food Vendor located or operating within the City of Philadelphia.

(k) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams (sometimes called StyrofoamTM) 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

City of Philadelphia

BILL NO. 070672, as amended continued

molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

(l) "Prepared Food" means food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared (collectively "prepared") within the City of Philadelphia for individual customers or consumers. For the purpose of this chapter, Prepared Food includes take-out food, but does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.

(m) "Recyclable" means material that can be sorted, cleansed, and reconstituted for the purpose of using the altered form in the manufacture of a new product, through the City's curbside recycling collection program. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

(n) "Restaurant" means any establishment located within the City of Philadelphia that sells Prepared Food for consumption on, near, or off its premises. For purposes of this chapter, the term includes a Restaurant operating from a temporary facility, cart, vehicle or mobile unit.

(o) "Retail Food Vendor" means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a Restaurant, located within the City of Philadelphia that sells Prepared Food.

§9-3102. Prohibited Disposable Food Service Ware.

(a) Food Vendors may not sell Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam, if the Department determines, in accordance with this subsection, that there is a suitable Affordable Biodegradable or Compostable or Recyclable alternative product available. Not later than 30 days before the operative date of this chapter, and after a public hearing, the Department shall adopt a list of available suitable Affordable Biodegradable and Compostable and Recyclable alternatives for each product type. The Department shall regularly update the list.

(b) City Facility Food Providers may not provide Prepared Food in Disposable Food Service Ware that contains Polystyrene Foam, if the Department determines, in accordance with subsection 9-3102(a), there is a suitable Affordable Biodegradable or Compostable or Recyclable product available.

(c) City Departments may not purchase, acquire or use Disposable Food Service Ware that contains Polystyrene Foam, if the Department determines, in accordance with subsection 9-3102(a), there is a suitable Affordable Biodegradable or Compostable or Recyclable product available.

City of Philadelphia

BILL NO. 070672, as amended continued

(d) City Contractors and Lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities or while performing under a City contract or lease, if the Department determines, in accordance with subsection 9-3102(a), there is a suitable Affordable Biodegradable or Compostable or Recyclable product available.

§9-3103. *Implementation; City Contracts And Leases.*

(a) The Department is authorized to promulgate regulations, guidelines and forms and to take any and all other actions reasonable and necessary to implement and enforce this Chapter.

(b) Any person may seek a waiver from the requirements of Section 9-3102 of this Chapter by filing a request on a form specified by the Department. The Department, consistent with this Chapter, may waive any specific requirement of this Chapter for a period of up to one year if the person seeking the waiver has demonstrated that strict application of the specific requirement would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The Department's decision to grant or deny a waiver shall be in writing and shall be final.

(c) All City Contracts and Leases, including without limitation, contracts with City Facility Food Providers, shall contain the following minimum language: "Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Chapter 9-3100 of The Philadelphia Code, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 9-3100 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of contractor's failure to comply with this provision."

§9-3104. *Enforcement And Penalties.*

(a) The Department shall issue a written warning to any person he or she determines is violating subsection 9-3102(a) of this Chapter. If after issuing a written warning of violation from the Department, the Department finds that person continues to violate the provisions of Sections 9-3102(a), the Department may apply for or impose the various sanctions provided in this Section.

City of Philadelphia

BILL NO. 070672, as amended continued

(b) Any person who violates the provisions of subsection 9-3102(a) of this Chapter shall be subject for the first offense to a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a second violation within a year of the first offense; and not more than \$250.00 for each subsequent violation within a year of a previous offense.

(c) Notices of violation issued pursuant to this Section shall be issued in accordance with Section 1-112 of the Code.

(d) The City Solicitor may seek legal, injunctive, or other equitable relief to enforce this Chapter.

§9-3105. Report To The City Council.

No later than June 1, 2009, the Department and with input from members of the public, shall submit to the City Council a report recommending changes, if any, to this Chapter, including whether the ban imposed by this Chapter should be extended to other products, as supported by the report. If the Department recommends banning additional products, the report must include an estimate of the costs and benefits of compliance with a ban on additional products, including the increased costs to the City as well as to the City's food service industry.

§9-3106. No Conflict With Federal Or State Law.

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

SECTION 2. Effective Date. This Ordinance shall take effect on June 1, 2008.

Explanation:

Italics indicate new matter added.

City of Philadelphia

BILL NO. 070672, as amended continued