



City of Philadelphia

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

BILL NO. 090064
(As Amended, 5/1/09)

Introduced February 5, 2009

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 comparable product 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.

(c) "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,

City of Philadelphia

BILL NO. 090064, as amended continued

mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. 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. For the purposes of this Chapter the term biodegradable shall have the same meaning as compostable.

(d) "Director" means the Director of Sustainability or any officer, agent or employee of the City designated to act on the Director's behalf, or any other person designated by the Mayor to carry out the duties of the Director under this ordinance.

(e) "Disposable Food Service Ware" means all containers, bowls, plates, trays, cartons, cups, lids, clamshell containers and other similar items that are designed for one-time use and on or in which Prepared Foods may be served. 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.

(f) "Food Vendor" means any restaurant, store, shop, deli, caterer, special event vendor, mobile vendor, cart or other establishment or temporary operation that sells Prepared Food, whether for consumption on, near, or off the premises where the food is served.

(g) "Large Provider Of Meals" means a person, business entity or other organization, whether for profit, not-for-profit or governmental, that provides, on average over a three month period, more than 25 meals per week without charge on or in Disposable Food Service Ware.

(h) "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 molding, foam molding, and extrusion-blown molding (extruded foam polystyrene), and which is sometimes used to make, among other things, cups, bowls, plates, trays, and clamshell containers.

(i) "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.

City of Philadelphia

BILL NO. 090064, as amended continued

(j) "Recyclable" means material that can be sorted, cleansed, and reconstituted using Philadelphia's 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.

§9-3102. Prohibited Disposable Food Service Ware.

If, with respect to any particular Disposable Food Service Ware product that contains Polystyrene Foam, the Director identifies, pursuant to the requirements of Section 9-3103, a comparable Affordable Compostable or Recyclable Disposable Food Service Ware product that is similarly effective for a particular use:

(a) Food Vendors shall not sell Prepared Food in or on such a foam Disposable Food Service Ware product for such particular use; and

(b) No Large Provider of Meals shall provide Prepared Food in or on such a foam Disposable Food Service Ware product for such particular use;

(c) No business entity or other organization, whether for profit, not-for-profit or governmental, that employs more than ten people shall regularly make available for use by its employees, customers or the public such a foam Disposable Food Service Ware product for such particular use.

§9-3103. Implementation.

(a) The Director shall by regulation adopt, and from time to time update or amend, a list of comparable Affordable Compostable or Recyclable Disposable Food Service Ware products that are similarly effective for particular uses as particular Disposable Food Service Ware products that contain Polystyrene Foam.

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

(c) Any person may seek a waiver from the requirements of this Chapter by filing a request on a form specified by the Director. The Director, 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

City of Philadelphia

BILL NO. 090064, as amended continued

applicable to other persons in similar circumstances. The Director's decision to grant or deny a waiver shall be in writing and shall be final.

§9-3104. Regulations Applicable To Suppliers.

(a) It shall be unlawful for any supplier to make any misstatement of material fact to any food vendor or to the Director regarding the Compostable or Recyclable nature of, or the use or non-use of polystyrene foam in the manufacture of any Disposable Food Service Ware product supplied to any food vendor.

§9-3105. Enforcement And Penalties.

(a) Food Vendors shall retain invoices for all purchases of Disposable Food Service Ware products for a period of two years from the date of purchase, which invoices shall be subject to review by the City.

(b) A violation of this Chapter shall be subject to a fine of not more than \$200 for the first violation; not more than \$300 for a second violation within a year of the first violation; and not more than \$500 for each subsequent violation within a year of a previous offense.

(c) Notices of violation pursuant to this Section may 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.

SECTION 2. Effective Date. This Ordinance shall take effect one year from its adoption into law.

Explanation:

Italics indicate new matter added.