



# City of Philadelphia

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

**BILL NO. 070671**

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**Introduced September 20, 2007**

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**Councilmembers Kenney and DiCicco**

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**Referred to the  
Committee on the Environment**

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## **AN ORDINANCE**

Enacting a new Chapter 9-3200 of The Philadelphia Code, entitled "Shipping and Packaging Waste Reduction Ordinance," to prohibit the use of disposable packaging materials that contain polystyrene foam and to require the use of biodegradable/compostable or recyclable disposable packaging materials by package shippers, 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 9-3200 of The Philadelphia Code, entitled "Shipping and Packaging Waste Reduction Ordinance," is hereby enacted, to read as follows:

### *CHAPTER 9-3200. SHIPPING AND PACKAGING WASTE REDUCTION ORDINANCE.*

*§9-3201. Definitions.*

*(a) "Affordable" means purchasable for not more than 10 percent more than the purchase cost of the non-Biodegradable non-Compostable or non-recyclable alternative(s).*

*(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.*

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(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, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable Disposable Package and Shipping Materials 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. This chapter uses the terms biodegradable and compostable interchangeably and in all cases whether the terms are used separately, in the disjunctive or in the conjunctive they shall always be interpreted and applied consistent with this definition of the term "compostable".

(d) "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 and services or supplies to be purchased at the expense of the City, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City.

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

(f) "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.

(g) "Disposable Packaging and Shipping Materials" means any loose-fill packing material used to prevent damage to fragile objects during shipping roughly the size and shape of a peanut (in its shell).

(h) "Polystyrene Foam" means blown polystyrene and expanded and extruded foams (sometimes called Styrofoam<sup>TM</sup>) 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). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

(i) "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.

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(j) “Package Shipper” means any store, shop, sales outlet, or other establishment which packages and/or ships items the establishment offers for sale or which accepts items from the public for the purpose of packaging and/or preparing the item for shipment via any common carrier, express delivery service or the United States Postal Service.

## §9-3202. Prohibited Disposable Packaging and Shipping Materials.

(a) Package Shippers may not sell or use Disposable Packaging and Shipping Materials that contain Polystyrene Foam.

(b) City Departments may not purchase, acquire or use Disposable Packaging and Shipping Materials that contain Polystyrene Foam.

(c) City Contractors and Lessees may not use Disposable Packaging and Shipping Materials that contain Polystyrene Foam in City Facilities and while performing under a City contract or lease.

## §9-3203. Required Biodegradable/Compostable Or Recyclable Disposable Packaging And Shipping Materials.

(a) All Package Shippers using any Disposable Packaging and Shipping Materials shall use a suitable Affordable alternative Biodegradable/Compostable or Recyclable product, unless there is no suitable Affordable Biodegradable/Compostable or Recyclable product available as determined by the Department in accordance with this subsection. 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 / Compostable or Recyclable alternatives for each product type. The Department shall regularly update the list.

(b) All City departments using any Disposable Packaging and Shipping Materials shall use Biodegradable/Compostable or Recyclable Disposable Packaging and Shipping Materials unless there is no Affordable Biodegradable or Compostable product available as determined by the Department in accordance with Section 9-3203(a).

(c) City Contractors and Lessees using any Disposable Packaging and Shipping Materials shall use suitable Biodegradable/Compostable or Recyclable Disposable Packaging and Shipping Materials in City Facilities and while performing under a City Contract or Lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the Department in accordance with Section 9-3203(a).

## §9-3204. Implementation; City Contracts And Leases.

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(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 9-3203 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 shall contain the following minimum language: "Contractor agrees to comply fully with and be bound by all of the provisions of the Shipping and Packaging Waste Reduction Ordinance, as set forth in Chapter 9-3200 of The Philadelphia Code, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 9-3200 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."*

## *§9-3205. Enforcement And Penalties.*

(a) *The Department shall issue a written warning to any person he or she determines is violating Sections 9-3202(a) or 9-3203(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 9-3202(a) or 9-3203(a), the Department may apply for or impose the various sanctions provided in this Section.*

(b) *Any person who violates the provisions of Sections 9-3202(a) or 9-3203(a) of this Chapter shall be guilty of an infraction. If charged as an infraction, upon conviction thereof, said person shall be punished for the first offense by a fine of not more than \$100.00 for a first violation; not more than \$200.00 for a second violation in the same year and not more than \$250.00 for each subsequent violation in the same year.*

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*(c) The Department may issue an administrative civil liability citation to such person in an amount not exceeding \$100.00 for the first violation, an amount not exceeding \$200.00 for the second violation in the same year, and an amount not exceeding \$500.00 for each subsequent violation in the same year.*

*In determining administrative civil penalties, the Department shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator.*

*Any person to whom the Department issues a written warning of violation or an administrative civil liability citation may request an administrative hearing to appeal such warning or determination of liability. Not later than 30 days before the operative date of this Chapter, and after a public hearing, the Department shall promulgate rules and procedures for requesting and conducting an administrative hearing under this Chapter. In any administrative hearing under this Chapter, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to see and copy all documents and other information the City relies on in the proceeding, and to confront and cross-examine any witnesses against them. A decision by the hearing officer shall be final. Any person assessed a penalty under this subsection may contest such decision to the Court of Common Pleas of Philadelphia County within 20 days after service of the City's decision.*

*(d) The City Solicitor may seek legal, injunctive, or other equitable relief to enforce this Chapter, including without limitation, civil penalties in an amount not exceeding \$100.00 for the first violation, \$200.00 for the second violation, and \$250.00 for each subsequent violation in any given year.*

*(e) The City may not recover both administrative and civil penalties pursuant to Subsections (c) and (d) of this Section for the same violation. Penalties collected under Subsections (c) and (d) of this Section, which may include recovery of enforcement costs, shall be used to fund implementation and enforcement of this Chapter.*

§9-3206. *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 package and shipping industry.*

§9-3207. *No Conflict With Federal Or State Law.*

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*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.*

§9-3208. *Undertaking For The General Welfare.*

*In undertaking the implementation of this Chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.*

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

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**Explanation:**

*Italics indicate new matter added.*