

MEMORANDUM

September 5, 2014

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** Bill 41-14, Solid Waste (Trash) – Food Service Products – Packaging Materials – Requirements

Bill 41-14, Solid Waste (Trash) – Food Service Products – Packaging Materials – Requirements, sponsored by Councilmember Riemer and Council Vice President Leventhal, is scheduled to be introduced on September 9. A public hearing will be scheduled at a later date.

Bill 41-14 would:

- (1) prohibit the use of certain expanded polystyrene food service products by food service businesses;
- (2) require the use of compostable or recyclable food service ware by the County, County contractors or lessees, and food service businesses;
- (3) prohibit the sale of certain expanded polystyrene food service products and polystyrene loose fill packaging;
- (4) provide for enforcement; and
- (5) generally amend County law regarding environmentally acceptable food service products and packaging materials.

Background

In 2012, the Council approved Resolution No. 17-522, expressing support for the elimination of expanded polystyrene foodware in County Government cafeterias and encouraging other public and private food service facilities to also consider the elimination of the use of polystyrene foodware (See ©8-9). Expanded polystyrene (“polystyrene foam”), frequently referred to as Styrofoam, is commonly used in disposable food containers, both for prepackaged and carry-out prepared food. This Bill builds upon the Council’s action in Resolution 17-522, generally prohibiting certain uses of polystyrene foam food service products, prohibiting the sale of certain polystyrene foam products, and requiring the use of compostable or recyclable food service ware. In a September 2 memorandum, Councilmember Riemer briefly discussed the basis for his proposal (See ©10). Proponents of reducing or restricting the use of polystyrene foam say that it is harmful to both the environment and human health.

Environmental Impacts

Advocates for limiting the use of polystyrene foam cite the pervasive presence of the foam as litter in the marine environment as justification for a ban.¹ A local example of this problem has been demonstrated by the “trash trap” in the District of Columbia along Nash Run, which flows into the Anacostia River. According to a 2010 report prepared by the Anacostia Watershed Society for the District Department of Environment, about 22% of average trash volume collected by the trap was polystyrene foam.² This problem is not merely aesthetic; like other plastics, polystyrene foam photodegrades, breaking down into smaller and smaller pieces, but never really going away. Fish and other aquatic wildlife often mistake the tiny pieces of foam for food, ingest them, and suffer harm as a result.³

Human Health Concerns

Styrene, a main ingredient in making polystyrene foam, is listed as “a reasonable anticipated human carcinogen” in the U.S. Department of Health and Human Service's *Report on Carcinogens, 12th Edition* (2011). The primary risk is to workers improperly exposed to styrene in the manufacturing process, with the primary non-occupational exposure through cigarette smoke. However, styrene may also leach into food from polystyrene containers used for food products, with the level of migration of styrene to food dependent on a number of factors.⁴

Laws in Other Jurisdictions

The use of polystyrene foam has been restricted or prohibited in many local jurisdictions, both county and municipal, throughout California and in the Pacific Northwest.⁵ Among large jurisdictions on the East coast, New York City enacted a ban in 2013,⁶ and the District of Columbia did so in June of this year.⁷ A ban has been considered in Baltimore City, but has not been enacted, and bans have been or currently are being considered in Philadelphia, Boston, and Chicago.

Current local laws vary in their scope, with some banning the use of polystyrene foam only for food service, i.e., leftovers and carry-out, while others extend the prohibition to the sale of certain polystyrene foam products, including plates, cups and packing materials. Many of the local laws banning certain uses of polystyrene foam also require that *any* disposable food service

¹ http://www.cleanwater.org/files/publications/ca/cwa_fact_sheet_polystyrene_litter_2011_03.pdf

² See pages ix – xii of “*Demonstration of Trash Reduction Technologies in the Anacostia Watershed (Nash Run Trash Trap Project) Final Technical Report*,” found at: http://green.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/Nash_Run_TT_Final_Tech_Report_Entire.pdf.

³ http://www.anchoragemuseum.org/images/downloads/gyre/Lesson3_EffectsofMarineDebris.pdf

⁴ <http://ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/styrene.pdf>

⁵ The cities of Los Angeles, San Francisco, Oakland, and San Jose, and the counties of Marin, Los Angeles, and Santa Cruz are some of the larger California jurisdictions to implement some form of polystyrene foam ban. Seattle, Washington, and Portland Oregon have also done so. A list of cities and counties with such bans can be found at: <http://www.groundswell.org/map-which-cities-have-banned-plastic-foam/>

⁶ <http://legistar.council.nyc.gov/View.ashx?M=F&ID=2938756&GUID=5A837168-3319-450D-8A40-FDF597A3E5CC>

⁷ http://lims.dccouncil.us/_layouts/15/uploader/Download.aspx?legislationid=30722&filename=B20-0573-SignedAct.pdf (pp.7-9).

ware used for food service businesses, such as plates, cups, utensils, and napkins, be compostable or recyclable.

Bill 41-14

The provisions of Bill 41-14 prohibiting the use of certain polystyrene foam food service products, and requiring the use of compostable or recyclable food service ware, are similar to those of the recently enacted District of Columbia law, with identically staggered effective dates. This consistency between neighboring jurisdictions should make it easier for businesses operating in both jurisdictions to adjust their practices.

Bill 41-14 would prohibit food service businesses (restaurants, grocery stores, institutional cafeterias, etc.) from using “expanded polystyrene (foam) food service products,” such as containers, plates, cups, trays, egg cartons, effective January 1, 2016. Products packaged outside the County before receipt by the food service business, and materials used to package raw meat, seafood, or poultry are exempt from the prohibition.

The Bill would also require the County and County contractors and lessees to use compostable or recyclable disposable food service ware, as those terms are defined in the Bill, effective 90 days after the Bill becomes law. “Disposable food service ware” is a broader term than, and inclusive of, “expanded polystyrene food service products.” The requirement to use compostable or recyclable disposable food service ware would apply to food service businesses beginning January 1, 2017.

Bill 41-14 would also prohibit the *sale* of polystyrene loose fill packaging, commonly referred to as “packing peanuts,” and expanded polystyrene food service products, effective January 1, 2016. This provision is similar to provisions of the law in New York City and several California jurisdictions.

The Executive would be required to publish, and update annually, a list of vendors offering affordable compostable or recyclable disposable food service ware products. Also, the Executive would be required to determine whether there is no affordable compostable or recyclable alternative to particular disposable food service ware items, and list such items on an exemption list. The prohibitions and requirements of the law would not apply to products on the exemption list. The Department of Environmental Protection would be responsible for enforcement of the law. A violation would be a Class B violation, and the County Attorney would be authorized to seek injunctive relief.

This packet contains:

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Bill No. 41-14
Concerning: Solid Waste (Trash) – Food
Service Products – Packaging
Materials – Requirements
Revised: September 4, 2014 Draft No. 5
Introduced: September 9, 2014
Expires: March 9, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Riemer and Council Vice President Leventhal

AN ACT to:

- (1) prohibit the use of certain expanded polystyrene food service products by food service businesses;
- (2) require the use of compostable or recyclable food service ware by the County, County contractors or lessees, and food service businesses;
- (3) prohibit the sale of certain expanded polystyrene food service products and polystyrene loose fill packaging;
- (4) provide for enforcement; and
- (5) generally amend County law regarding environmentally acceptable food service products and packaging materials.

By adding

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Article VI, Disposable Food Service Products and Packaging Materials
Sections 48-52, 48-53, 48-54, 48-55, 48-56, 48-57, and 48-58

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Article VI (Sections 48-52, 48-53, 48-54, 48-55, 48-56, 48-57, and
2 48-58) of Chapter 48 is added as follows:

3 ARTICLE VI. Disposable Food Service Products and Packaging Materials.
4 48-52. Definitions.

5 In this Article, the following terms have the meanings indicated:

6 ASTM standard means the American Society for Testing and Materials
7 (ASTM) International Standards D6400 or D6868 for biodegradable and
8 compostable plastics.

9 ASTM standard bioplastic means a plastic like product that meets the ASTM
10 standard.

11 Compostable means material that will break down into, or otherwise become
12 part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and
13 timely manner in an appropriate composting program or facility, or in a home
14 compost pile or device. Compostable disposable food service ware includes
15 ASTM standard bioplastics that are clearly labeled, preferably with a color
16 symbol, such that any compost collector and processor can easily distinguish
17 the compostable ASTM standard bioplastic from non-ASTM standard plastic.

18 Disposable food service ware means containers, bowls, plates, trays, cartons,
19 cups, lids, straws, forks, spoons, knives, napkins, and other items that are
20 designed for one-time use for beverages, prepared food, or leftovers from
21 meals prepared by a food service business. The term “disposable food service
22 ware” does not include items composed entirely of aluminum.

23 Expanded polystyrene means blown polystyrene and expanded and extruded
24 foams that are thermoplastic petrochemical materials utilizing a styrene
25 monomer and processed by a number of techniques, including fusion of
26 polymer spheres (expandable bead polystyrene), injection molding, foam
27 molding, and extrusion-blow molding (extruded foam polystyrene).

28 Expanded polystyrene food service products means food containers, plates, hot
 29 and cold beverage cups, meat and vegetable trays, egg cartons, and other
 30 products made of expanded polystyrene and used for selling, providing, or
 31 serving food that are:

32 (1) intended by the manufacturer to be used once for eating or
 33 drinking; or

34 (2) generally recognized by the public as items to be discarded after
 35 one use.

36 Food service business means a full-service restaurant, limited-service
 37 restaurant, fast food restaurant, cafe, delicatessen, coffee shop, supermarket,
 38 grocery store, vending truck or cart, food truck, business or institutional
 39 cafeteria, including those operated by or on behalf of County departments and
 40 agencies, and other business selling or providing food within the County for
 41 consumption on or off the premises.

42 Polystyrene loose fill packaging means a void-filling packaging product made
 43 of expanded polystyrene that is used as packaging fill. Polystyrene loose fill
 44 packaging is commonly referred to as packing peanuts.

45 Recyclable means material that can be sorted, cleansed, and reconstituted in a
 46 cost-effective manner using recycling collection programs provided in the
 47 County for the purpose of using the altered form in the manufacture of a new
 48 product. Recycling does not include burning, incinerating, converting or
 49 otherwise thermally destroying solid waste.

50 **48-53. Prohibition on use of expanded polystyrene food service products.**

51 (a) A food service business must not sell or provide food in expanded
 52 polystyrene food service products, regardless of where the food will be
 53 consumed.

54 (b) Subsection (a) does not apply to:

- 55 (1) food or beverages that were filled and sealed in expanded
 56 polystyrene containers outside of the County before a food
 57 service business received them; or
- 58 (2) materials used to package raw, uncooked, or butchered meat, fish,
 59 poultry, or seafood for off- premises consumption.

60 **48-54. Compostable or recyclable disposable food service ware required.**

- 61 (a) A County facility, agency, or department using disposable food service
 62 ware must use compostable or recyclable disposable food service ware
 63 unless the Executive determines that there is no suitable affordable
 64 compostable or recyclable product available in accordance with Section
 65 48-57.
- 66 (b) A County contractor or lessee using disposable food service ware must
 67 use compostable or recyclable disposable food service ware unless the
 68 Executive determines that there is no suitable affordable compostable or
 69 recyclable product available in accordance with Section 48-57.
- 70 (c) A food service business selling or providing food or beverages for
 71 consumption on or off premises in disposable food service ware must
 72 use compostable or recyclable disposable food service ware; provided,
 73 that this subsection does not apply to prepackaged food or beverages
 74 that were filled and sealed outside of the County before a food service
 75 business received them.

76 **48-55. Recyclable and compostable food service ware list.**

77 No later than 180 days after the effective date of this Act, the Executive must
 78 publish a list of vendors offering affordable compostable or recyclable disposable
 79 food service ware products. The Executive must review and update this list annually
 80 for at least 5 years after it is first published.

81 **48-56. Prohibition on sale.**

82 A person must not sell or offer for sale in the County:

83 (a) expanded polystyrene food service products; or

84 (b) polystyrene loose fill packaging.

85 **48-57. Exemptions.**

86 If the Executive determines that there is no available affordable compostable
 87 or recyclable alternative to a disposable food service ware item, this item must be
 88 listed on an exemption list and made available to the public. Sections 48-53 and 48-
 89 54 do not apply to a disposable food service ware item on the exemption list or for
 90 the first 6 months after an item is removed from the list. The Executive must review
 91 and update the exemption list annually to determine whether any items should be
 92 removed because an affordable compostable or recyclable alternative has become
 93 available.

94 **48-58. Enforcement.**

95 (a) Any violation of this Article is a class B civil violation. Each day a
 96 violation exists is a separate offense.

97 (b) The County Attorney or any affected party may file an action in a court
 98 with jurisdiction to enjoin repeated violations of the Section.

99 **Sec. 2. Effective date.**

100 (a) The prohibition on use of expanded polystyrene food service products
 101 contained in Section 48-53 and the prohibition on the sale of expanded
 102 polystyrene food service products and polystyrene loose fill packaging
 103 contained in Section 48-56 take effect on January 1, 2016.

104 (b) The requirement for a County facility, agency, department, contractor,
 105 or lessee to use compostable or recyclable disposable food service ware
 106 established by Subsections 48-54 (a) and (b) takes effect 90 days after
 107 this Act becomes law. Notwithstanding any other provision, a County
 108 facility, agency, department, contractor, or lessee may use disposable

109 food service ware already purchased as of the effective date of this Act
110 until the supplies are exhausted or until January 1, 2017, whichever is
111 earlier, including disposable food service ware that the County facility,
112 agency, department, contractor or lessee is obligated to purchase under
113 any contracts in force on the effective date of this Act.

114 (c) The requirement to use compostable or recyclable disposable food
115 service ware established by Subsection 48-54(c) takes effect on January
116 1, 2017.

117 *Approved:*

118 _____
Craig L. Rice, President, County Council Date

119 *Approved:*

120 _____
Isiah Leggett, County Executive Date

121 *This is a correct copy of Council action.*

122 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 41-14

Solid Waste (Trash) – Food Service Products – Packaging Materials – Requirements

DESCRIPTION:	<p>This bill would</p> <ul style="list-style-type: none">• Prohibit the use of certain polystyrene foam food service products by food service businesses beginning on January 1, 2016.• Prohibit the sale of foam loose fill packaging (packing peanuts) and bulk foam food service products (i.e., bulk foam cups and plates) beginning on January 1, 2016.• Require the use of compostable or recyclable food service products by the County, and County Contractors and lessees 90 days after the Act becomes law, and by food service businesses beginning on January 1, 2017.
PROBLEM:	<p>Polystyrene foam is a pervasive source of litter, both on land and in marine environments, and has been classified as “reasonably anticipated to be a human carcinogen” by the U.S. Department of Health and Human Services.</p>
GOALS AND OBJECTIVES:	<p>To reduce the negative environmental and human health effects of polystyrene foam by reducing its use in the County.</p>
COORDINATION:	<p>Department of Environmental Protection</p>
FISCAL IMPACT:	<p>To be requested.</p>
ECONOMIC IMPACT:	<p>To be requested.</p>
EVALUATION:	<p>To be requested.</p>
EXPERIENCE ELSEWHERE:	<p>To be researched.</p>
SOURCE OF INFORMATION:	<p>Josh Hamlin, Legislative Attorney</p>
APPLICATION WITHIN MUNICIPALITIES:	<p>To be researched.</p>
PENALTIES:	<p>Civil penalties and injunctive relief.</p>

Resolution No.: 17-522
Introduced: July 17, 2012
Adopted: July 31, 2012

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Leventhal

SUBJECT: Elimination of the Use of Polystyrene Plates, Cups, and other Foodware in County Government Cafeterias

Background

1. Polystyrene is a petroleum-derived plastic-like material used for packaging. The foam form, known as expanded polystyrene (EPS), is commonly used to make disposable plates, cups, bowls and other items.
2. Approximately 1 million tons of polystyrene plates, cups, and other foodware are disposed of in the United States every year.
3. While potentially recyclable as a #6 plastic, polystyrene is not commonly recycled because of food contamination concerns and because polystyrene's high volume to weight ratio complicates transport of the material. The Environmental Protection Agency estimates that less than one percent of all polystyrene produced in the United States is recycled.
4. Montgomery County's Department of Environmental Protection, Division of Solid Waste, does not recycle polystyrene because of the lack of stable regional markets for the product and because of the complications noted in Paragraph 3.
5. Environmentally friendly alternatives to the use of polystyrene are available, such as: reusable equipment (trays, cups, and silverware) and the use of paper and other products made from recycled content and which are also compostable, biodegradable and/or recyclable.
6. County residents, businesses, and government all need to be good stewards of the environment. County Government should lead by example with environmental initiatives to affirm the County's commitment to reduce its environmental footprint and to show that viable environmentally-friendly options are available and should be pursued whenever possible.

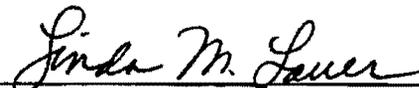
7. The County's Department of General Services has successfully worked with its food service contractors to eliminate the use of polystyrene at its cafeteria sites. These sites are now using recycled paper products for food containers and plates and using clear plastic products for certain wet food items.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council supports the elimination of polystyrene foodware in County Government cafeterias and encourages other public and private food service facilities to also consider the elimination of the use of polystyrene foodware.

This is a correct copy of Council action.



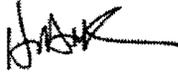
Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY COUNCIL
Rockville, Maryland

Councilmember Hans Riemer
At Large

MEMORANDUM

To: Councilmembers
From: Councilmember Hans Riemer 
Re: Banning Expanded Polystyrene in Montgomery County
Date: September 2, 2014

Colleagues, on September 9, I am introducing a bill that that would ban the use and sale of certain forms of expanded polystyrene (sometimes called "Styrofoam," although Styrofoam is just one brand of expanded foam) in the County. I ask for your co-sponsorship and support.

With this ban, Montgomery County would join a growing list of other communities that have taken action to ban expanded polystyrene, including Washington DC, San Francisco, Seattle, and New York City.

My bill closely tracks legislation passed in Washington, DC, and signed by Mayor Gray in July, 2014. Our implementation timeline would match Washington's, allowing for a smoother regional effort to raise awareness as well as helping to strengthen the local market for alternative products.

Specifically, the bill includes the following key provisions:

- Prohibits the use of foam food service products by food service businesses beginning on January 1, 2016.
- Prohibits the sale of foam loose fill packaging (packing peanuts) and bulk foam food service products (bulk foam cups and plates) beginning on January 1, 2016.
- Requires the use of compostable or recyclable food service products by the County, County Contractors, and food service businesses beginning on January 1, 2017.

This is important because foam, which is a petroleum-based plastic, is a meaningful share of the litter and pollution found in our watersheds. Over time, discarded foam breaks down into small pieces, but it does not completely dissolve and it is very hard to clean up. When it is ingested by marine life, it causes harm. For human health, the National Research Council has recently "upheld the listing of styrene as 'reasonably anticipated to be a human carcinogen.'"¹

Fortunately, there are reasonable alternatives to expanded foam.

¹ <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=18725>