

Chapter 46: Solid Waste Management

Article VII: Single Use Plastic Food Service Products *[New]*

Section 46-120: Purpose

To prohibit the use of expanded polystyrene and single use plastic food service containers, plastic straws, plastic stirrers and plastic cups, and require food service businesses to transition from disposable plastic food service ware to compostable and recyclable alternatives.

Section 46-121: Justification

Single use plastics, whether made of recyclable material or not, and expanded polystyrene pose a threat to Westport's aquatic and terrestrial ecosystems. By prohibiting these items, Westport seeks to protect the environment, eliminate a major source of waste and protect the public health, safety and welfare of Westport and its citizens.

Section 46-122: Definitions

For purposes of this section, the following definitions shall apply.

(a) "Food Service Businesses" means full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, vending trucks or carts, take-out food businesses, caterers, business or institutional cafeterias, or other businesses located in Westport that sell or provide food within the Town of Westport for consumption on or off the premises.

(b) "Single Use Plastic Food Service Products" means any food containers, straws, stirrers, plates, "clamshells," hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products, other than utensils, made primarily of plastic, including, but not limited to, blown polystyrene and expanded and extruded foams (including Styrofoam™), which are used for selling or providing food for consumption on or off the premises and are designed to be used only one time in its same form by a Food Service Business.

(c) "Take-Out Food Orders" means prepared meals or other food or beverage items that a customer purchases at a Food Service Business and intends to eat elsewhere.

(d) "Recyclable" means made solely of materials that are capable of being separated from a waste stream by a Food Service Business and made available for collection and delivery to a processor for reuse or remanufacture into the same or other products.

Section 46-123: Prohibitions; Exemptions

(a) Food Service Businesses shall not sell or provide food, for consumption on or off the premises, in or with Single Use Plastic Food Service Products; except that Food Service Businesses shall be permitted to use Single Use Plastic Food Service Products containing

prepackaged foods that Food Service Businesses sell or otherwise provide to their customers that have been filled and sealed prior to receipt by the Food Service Businesses.

(b) Food Service Businesses shall not provide utensils for Take-Out Food Orders unless requested by a patron.

(c) Straws and stirrers shall not be provided except upon request by a patron within a Food Service Business. Such straws and stirrers shall be biodegradable unless the patron needs a plastic straw for a medical or physical condition. Food Service Businesses will be allowed to carry no more than two boxes of 200 plastic straws at any time.

(d) Facilities required under Section 4-502.12 of the Food Code, 2017 Recommendations of the United States Public Health Service, Food and Drug Administration to provide only single use kitchenware, single service articles, and single use articles for use by food employees and single service articles for use by consumers may apply to the Director of Health for exemption after exhausting all viable alternatives.

Section 46-124: Enforcement

(a) Authority

The Conservation Department is hereby authorized to enforce violations of this Article as provided in this Section.

(b) Notice of Violation

(i) Prior to the issuance of an initial citation pursuant to this Section, the Conservation Department shall provide written notice to Food Service Businesses violating this Article.

(ii) The notice of violation shall state the violation and the date by which said violation shall be remedied.

(iii) Upon the failure to remedy the violation within the time period specified within the notice, the Conservation Department shall issue a citation as provided for in subsection (c) hereof. Repeat offenders shall be issued additional citations without first receiving a new notice of violation.

(c) Issuance of Citation

(i) The Conservation Department shall issue a citation when a violation persists beyond the date by which the Conservation Department required that the violation be remedied.

(ii) Any citation issued by the Conservation Department shall state:

a. A description of the violation.

b. The initial fine of \$150.00 plus such other penalties, costs and/or fees due for each violation.

- c. That after ten days from the date of the citation, each day thereafter that the violator has not sent notification of compliance to the Conservation Department shall constitute a separate violation and shall be subject to an additional \$150.00 fine.
 - d. That the uncontested payment of such fine(s), penalties, costs and/or fees shall be made within ten days of the date of the citation.
 - e. That such person may contest the liability before a citation hearing officer by delivering in person or by mail within ten days of the date of the citation a written demand for a hearing.
 - f. That if such a hearing is not demanded, it shall be deemed an admission of liability and an assessment and judgment shall be entered against the person, and that such judgment may issue without further notice.
- (iii) Any notice of violation or citation issued hereunder shall be sent to the person named in the citation by certified mail, return receipt requested and simultaneously by regular United States Postal Service mail.
- (iv) Once a written demand for a hearing has been received by the Conservation Department, no additional citations shall be issued for the violation, nor shall daily fines be imposed until after the conclusion of the hearing procedure as set forth in Subsection (e) hereof.
- (d) Civil Infractions Amount; Continuing Violations
 - (i) The fine for each occurrence of a violation shall be \$150.00 and shall be payable to the Town.
 - (ii) The person to whom a citation has been issued shall be responsible for reporting, in writing, their subsequent compliance to the Conservation Department.
 - (iii) After ten days from the date of the citation, each day thereafter that the violator has not sent notification of compliance to the Conservation Department shall constitute a separate violation subject to a separate fine.
- (e) Hearing Procedure For Citations
 - (i) The First Selectman shall appoint one or more hearing officers, other than any employee of the Town, to conduct the hearings resulting from violations of this article. Any assessment by a hearing officer shall be entered as a judgment against the violator
 - (ii) A person who chooses to appeal a citation and requests a hearing to this effect shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen days nor more than thirty days from the date of the citation notice, provided the hearing officer shall grant upon good cause shown any reasonable request by an interested party for postponement or continuance. An original or certified copy of the citation issued by the Conservation Department shall be filed and retained by the Town and shall be deemed to be a business record and evidence of the facts contained therein. Upon request of the person appealing the citation, the presence of the Conservation Department employee who issued the citation shall be required at the

hearing. A designated Town employee other than the hearing officer may present evidence on behalf of the Town. A person wishing to contest liability shall appear at the hearing and may present evidence. If the person who received the citation fails to appear, the hearing officer may enter an assessment by default upon a finding of proper notice and liability under the ordinance.

- (iii) The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The hearing officer shall announce his/her decision at the end of the hearing. If the hearing officer determines that the person is not liable, he/she shall dismiss the matter and enter his/her determination, in writing, accordingly. If the hearing officer determines that the person who received the citation is liable for the violation, the hearing officer shall then enter and assess the fines, penalties, costs or fees against the person as provided by this article.
- (iv) If such assessment is not paid on the date of its entry, the hearing officer shall send by first class mail a notice of the assessment to the person found liable and shall file, not less than thirty days nor more than twelve months after such mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court for the geographical area in which the Town is located, together with the applicable entry or filing fee. The certified copy of the notice of assessment shall constitute a record of assessment. Within such twelve-month period, all assessments against the same person may be accrued and filed as one record of assessment. The Clerk shall enter judgment, in the amount of the hearing officer's record of assessment, as well as court costs, against such person in favor of the Town. The hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may be issued without further notice to such person.
- (v) A person against whom an assessment has been entered pursuant to this article is entitled to judicial review by way of appeal in accordance with C.G.S. § 7-152c(g).

Section 46-125: Effective Date

This ordinance shall become effective six months after its adoption.