

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed "A LOCAL LAW amending Chapter 863 of the Laws of Westchester County by adding and a new Article XXXI, regulating the use of expanded polystyrene containers at food service establishments."

Your Committee is informed that expanded polystyrene (commonly, but incorrectly, referred to as Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) is difficult to recycle, does not decompose and makes up a significant portion of the trash polluting local waterways. In fact, research suggests that polystyrene and polystyrene products make up to 30% of our nation's landfills. Moreover, the resulting pollution is particularly dangerous for birds and sea creatures that often mistake polystyrene as food.

Your Committee is further informed that there are potential health risks because styrene, which is used to make polystyrene, is listed as a possible carcinogen by the International Agency for Research on Cancer. Additionally, two components of polystyrene, styrene and benzene, are suspected carcinogens and neurotoxins that are hazardous to human health. In fact, studies have shown that chemicals from polystyrene can leach into food, negatively affecting human health. Your Committee notes the intent of this proposed Article is to improve the environment in the County of Westchester and the health of its residents, by restricting the use of expanded polystyrene.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law _____ . Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends the adoption of this Local Law.

Dated: _____, 2019
White Plains, New York

COMMITTEE ON

RESOLUTION NO.- 2019

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. - 2019, entitled "A LOCAL LAW amending Chapter 863 of the Laws of Westchester County by adding a new Article XXXI, regulating the use of expanded polystyrene containers at food service establishments." The public hearing will be held at ____ .m. on the _____ day of ____, 2019 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. -2019

A LOCAL LAW amending Chapter 863 of the Laws of Westchester County by adding a new Article XXXI, regulating the use of expanded polystyrene containers at food service establishments.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 863 of the Laws of Westchester County is hereby amended by the addition of a new Article XXXI, regulating the use of expanded polystyrene containers at food service establishments, to read as follows:

ARTICLE XXXI – EXPANDED POLYSTYRENE FOOD SERVICE AND PACKAGING WASTE REDUCTION

Sec. 863.1701. Purpose.

Sec. 863.1702. Definitions.

Sec. 863.1703. Restrictions on expanded polystyrene food service wares.

Sec. 863.1704. Enforcement and penalties.

Sec. 863.1705. Reporting requirements.

Sec. 863.1706. Effect on other laws

Sec. 863.1707. Severability.

Sec. 863.1708. Reverse preemption.

Sec. 863.1701. Purpose.

Expanded polystyrene is difficult to recycle, especially with food residue, and it makes up a significant portion of the trash polluting our local waterways. There are also potential health risks; styrene, which is used to make polystyrene is listed as a possible carcinogen by the International Agency for Research on Cancer. The intent of this Article is to improve the environment in the County of Westchester, as well as the health

of its residents, by restricting the use of expanded polystyrene.

Sec. 863.1702. Definitions.

1. “Distribute” means the sale or other transfer of possession of an item for compensation, either as a separate transaction or as part of the sale or other transfer of possession of another item.
2. “Expanded polystyrene foam” shall mean blown polystyrene and expanded foams utilizing a -styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expanded bead foam). Polystyrene foam is generally used to make cups, bowls, plates and trays and does not include rigid polystyrene.
3. “Food service ware” shall mean all containers, bowls, plates, trays, cups, forks, spoons, knives, and other like items that are sold for one-time use for prepared foods, including without limitation, service ware for takeout foods or leftovers from partially consumed meals prepared by food service vendors. The term “food service ware” does not include items composed entirely of aluminum or polystyrene foam coolers or ice chests.
4. “Food service vendor” shall mean any restaurant, store, shop, sales outlet, food truck or other establishment including a grocery store or delicatessen that sells prepared food. The term “food service vendor” does not include sales of goods at yard sales, tag sales, other sales by residents at their home, or sales by schools, religious or civic organizations or any other non-profit organizations.
5. “Prepared food” shall mean food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on or off premises. The term “prepared food” does not include fresh produce, eggs, or any raw or

uncooked eat, fish, seafood, or poultry that is sold from a butcher case or similar retail appliance and packaged by an outside vendor.

Sec. 863.1703. Restrictions on expanded polystyrene food service wares.

1. No food service vendor shall distribute or otherwise provide food service wares, either as separate items or as part of the distribution of prepared food, that are made, in whole or in part, from expanded polystyrene.
2. For the purposes of this section, a food service vendor is exempt from the provisions of subdivision (1) of this section only if the prepared food was prepared for consumption in food service wares that were filled and sealed outside of the store,

Sec. 863.1704. Enforcement and penalties.

1. For the first violation of the provisions of this Article a civil penalty not exceeding two hundred fifty dollars (\$250.00) shall be imposed. For the second and succeeding violations, a civil penalty not exceeding five hundred dollars (\$500.00) shall be imposed for each single violation. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard.
2. This chapter shall be enforced by the Office of Weights and Measures-Consumer Protection and the Department of Health.
3. The Office of Weights and Measures-Consumer Protection and the Department of Health are authorized to issue notices of violation of this Article. Such notices of violation issued by either the Office of Weights and Measures-Consumer Protection or the Department of Health shall be returnable to the Office of Weights and Measures-

Consumer Protection.

4. Violations of the provisions of this Article shall be enforced in accordance with the provisions of the Laws of Westchester County Chapter 182, Chapter 277, Article VIII, and subdivision 1 of this section, as such provisions now exist or as they may hereafter be amended, or pursuant to any successor laws to these provisions.

Sec. 863.1705. Reporting requirements.

No later than December 31st, 2019 and annually thereafter, the Director of the Office of Weights and Measures-Consumer Protection shall prepare an annual recycling report that includes information on the notices of violation issued pursuant to this law.

Sec. 863.1706. Effect on other laws.

This Chapter shall not impair or supersede any ordinance, resolution or local law enacted by a village, town, or city within the County of Westchester which regulates expanded polystyrene in food service wares within its jurisdiction.

Sec. 863.1707. Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Article is for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Article, which remaining portions shall continue in full force and effect.

Sec 836.1708. Reverse preemption.

This article shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Legislature may determine via a mere resolution whether or not identical or substantially similar statement legislation has

been enacted for the purposes of triggering this provision of this section.

Section 2. This Local Law shall take effect 180 days after its adoption.