



Committee: T&E
Committee Review: At a future date
Staff: Amanda Mihill, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #FoodPackaging
Polystyrene, recycling, environment

SUBJECT

Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements
Lead Sponsor: Council President at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Bill – no vote expected

DESCRIPTION/ISSUE

Bill 33-20 would:

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

SUMMARY OF KEY DISCUSSION POINTS

- None

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MEMORANDUM

July 16, 2020

TO: County Council

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements¹

PURPOSE: Introduction – no Council vote required

Bill 33-20, Solid Waste (Trash) – Food Service Products Packaging Materials - Requirements, sponsored by Lead Sponsor Council President at the request of the County Executive, is scheduled to be introduced on July 21. A public hearing is tentatively scheduled for September 15 at 1:30 p.m.

Bill 33-20 would:

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

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¹#FoodPackaging
Polystyrene, recycling, environment

Bill No. 33-20
Concerning: Solid Waste (Trash) - Food Service Products Packaging Materials - Requirements
Revised: 7/8/2020 Draft No. 1
Introduced: July 21, 2020
Expires: January 21, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the Request of the County Executive

AN ACT to:

- (1) prohibit the use of expanded polystyrene food service products by food services 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 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 amending

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Sections 48-52, 48-53, and 48-56

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Sections 48-52, 48-53, and 48-56 of Chapter 48 is amended as**
 2 **follows:**

3 **48-52. Definitions.**

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

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

8 * * *

9 *Disposable food service ware* means containers, bowls, plates, trays, cartons,
 10 cups, lids, [straws, forks, spoons, knives, napkins,] and other items that are
 11 designed for one-time use for beverages, prepared food, or leftovers from means
 12 prepared by a food service business. [The term “*disposable*”] *Disposable food*
 13 *service ware*]”] does not include items composed entirely of aluminum.

14 [*Expanded polystyrene* means blown polystyrene and expanded and extruded
 15 foams that are thermoplastic petrochemical materials utilizing a styrene
 16 monomer and processed by a number of techniques, including fusion of polymer
 17 spheres (expandable bead polystyrene), injection molding, foam molding, and
 18 extrusion-blow molding (extruded foam polystyrene).]

19 [*Expanded polystyrene food service products* means food containers, plates, hot
 20 and cold beverage cups, meat and vegetable trays, egg cartons, and other
 21 products made of expanded polystyrene and used for selling, providing, or
 22 serving food that are:

- 23 (1) intended by the manufacturer to be used once for eating or drinking; or
 24 (2) generally recognized by the public as items to be discarded after one use.]

25 *Food service business* means a full-service restaurant, limited-service
 26 restaurant, fast food restaurant, café, delicatessen, coffee shop, supermarket,
 27 grocery store, vending truck or cart, food truck, business or institutional

28 cafeteria, including those operated by or on behalf of County departments and
29 agencies, and/or other business selling or providing food within the County for
30 consumption on or off the premises.

31 Polystyrene means the synthetic aromatic hydrocarbon polymer made from the
32 monomer styrene. Polystyrene products are thermoplastic petrochemical
33 materials that include injection molded, vacuum formed, or extruded solid
34 materials, and blown, expanded, and extruded foams.

35 Polystyrene food service products means food containers, plates, hot and cold
36 beverage cups, meat and vegetable trays, egg cartons, and other products made
37 of polystyrene and used for selling, providing, or serving food and drink which
38 are:

- 39 (1) intended by the manufacturer to be used once for eating or drinking; or
- 40 (2) generally recognized by the public as items to be discarded after one use.

41 * * *

42 **48-53. Prohibition on use of [expanded] polystyrene food service products.**

43 (a) A food service business must not sell or provide food in [expanded]
44 polystyrene food service products, regardless of where the food will be
45 consumed.

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

- 47 (1) food or beverages that were filled and sealed in [expanded]
48 polystyrene containers outside of the County before a food service
49 business received them; or
- 50 (2) materials used to package raw, uncooked, or butchered meat, fish,
51 poultry, or seafood for off-premises consumption.

52 * * *

53 **48-56. Prohibition on sale.**

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

- 55 (a) [expanded] polystyrene food service products; or
- 56 (b) polystyrene loose fill packaging.

57 * * *

58 **Sec. 2. Effective Date.**

59 The prohibition on use of polystyrene food service products contained in Section
60 48-53 and the prohibition on the sale of polystyrene food service products contained
61 in Section 48-56 take effect 12 months after this Act becomes law, or on January 1,
62 2022, whichever comes first.

LEGISLATIVE REQUEST REPORT

Bill 33-20

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

DESCRIPTION:	Bill 33-20 would revise County Council Bill 41-14 and Montgomery County Code Chapter 48, which currently ban the use and sale of expanded polystyrene food service ware products, to expand the prohibition to include all food service products made from polystyrene.
PROBLEM:	Polystyrene #6 plastic products are not recyclable in Montgomery County and are a source of contamination in the recycling stream.
GOALS AND OBJECTIVES:	To eliminate the sale and use of all polystyrene disposable food service ware products and promote the use of recyclable or compostable food service ware products.
COORDINATION:	Office of the County Attorney, Office of Procurement, Office of Management and Budget, Office of Finance, Department of Health and Human Services
FISCAL IMPACT:	Department of Finance.
ECONOMIC IMPACT:	OLO
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	Montgomery County and a number of jurisdictions locally and across the US have adopted bans on expanded polystyrene disposable food service ware products: this proposed legislation goes further to include all polystyrene #6 food service ware products.
SOURCE OF INFORMATION:	Adam Ortiz, Director, Department of Environmental Protection, 240-777-7781
APPLICATION WITHIN MUNICIPALITIES:	None
PENALTIES:	Class B

Fiscal Impact Statement
Bill XX-XX – Solid Waste (Trash) – Food Service Products Packaging Materials – Requirements

1. Legislative Summary:

This legislation extends the current ban on the use and sale of expanded polystyrene food service products to include all food service products made from polystyrene (both rigid and expanded forms).

As polystyrene #6 plastic products are not recyclable in Montgomery County and are a source of contamination in the recycling stream, this legislation prohibits the sale and use of all polystyrene disposable food service ware products and requires the use of recyclable or compostable food service ware products instead when non-durable items are used.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Revenues:

DEP estimates that the bill would generate minimal revenues from the issuance of citations against violators. Violation of the bill is a Class B violation, with fines of \$100 for initial offense and \$150 for each repeat offense, which may be levied each day that the repeat offense persists.

Expenditures:

The bill requires an education and outreach campaign to educate food service businesses about the ban on all #6 polystyrene food service products and for research and updates to businesses about available affordable recyclable and compostable options. Estimated implementation costs are \$75,000 because this is an expansion of the existing ban on expanded polystyrene food service products.

Ongoing outreach and education efforts are estimated at \$50,000, based upon a similar effort for Council Bill 41-14, the original expanded polystyrene ban.

Education efforts can be undertaken by existing staff.

Enforcement:

Even on a complaint-driven basis, investigation to determine whether a compliance issue exists, and gather evidence of violation of law requires staff resources. This legislation is introduced alongside Bill XX-XX – Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements, and existing staff resources are inadequate to take on this additional effort. The addition of one new Investigator position (Grade 21 Program Specialist II) is required to provide an adequate level of staffing resources to enforce both bills, at an estimated cost of \$61,297 in FY21 assuming it were filled in October, 2020, and \$91,084 per year thereafter.

To support the work of this Investigator position, a vehicle is also required, the purchase price of which is estimated to be \$25,000 with ongoing costs of \$5,000 annually.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The revenue generated under Bill XX-XX will be minimal.

The ban of all forms of polystyrene is estimated to cost \$161,297 in FY21 and \$146,084 per year in FY22-26.

	FY21	FY22	FY23	FY24	FY25	FY26
Outreach & Education	\$75,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Program Specialist II	\$61,297	\$91,084	\$91,084	\$91,084	\$91,084	\$91,084
Vehicle	\$25,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Total	\$161,297	\$146,084	\$146,084	\$146,084	\$146,084	\$146,084

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the bill.

DEP estimates 200 staff hours are required for outreach and education in implementation phase and an additional 100 hours per year thereafter for ongoing outreach and education. These education efforts may be absorbed by existing staff resources.

For enforcement, estimated staff hours based on 100 complaints/year would be 300 hours per fiscal year. The impact of Bill XX-XX Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements is an additional 300 complaints and 900 hours per year.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

This legislation adds new responsibilities to existing staff and can be absorbed with the addition of the new Program Specialist II position. This position would also be able to support the additional duties required under Bill XX-XX Solid Waste (Trash) – Reduction/Source Reduction; Single-Use Straws – Requirements

9. An estimate of costs when an additional appropriation is needed.

See responses for #3 and #7 above.

10. A description of any variable that could affect revenue and cost estimates.

Compliance with this mandate is difficult to project, therefore the range of revenues cannot be reliably estimated; however, any revenues generated by the bill are expected to be minimal.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Compliance with this mandate is difficult to project, therefore the range of revenues cannot be reliably estimated; however, any revenues generated by the bill are expected to be minimal.

12. If a bill is likely to have no fiscal impact, why that is the case.


Not applicable.


13. Other fiscal impacts or comments.

Not applicable

14. The following contributed to and concurred with this analysis:

Adam Ortiz, Department of Environmental Protection
Patrice Bubar, Department of Environmental Protection
Willie Wainer, Department of Environmental Protection
Eileen Kao, Department of Environmental Protection
Richard H. Harris, Office of Management and Budget


Richard S. Madaleno, Director
Office of Management and Budget


Date




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

March 27, 2020

TO: Sidney Katz, Council President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Montgomery County Code Chapter 48, Solid Waste (Trash) – Food Service Products–Packaging Materials–Requirements

This memorandum transmits the Department of Environmental Protection's (DEP) proposed legislation which would revise language in Montgomery County Code Chapter 48 and expand the existing ban on the use of expanded polystyrene (often referred to as the brand name Styrofoam®) food service products by food service businesses to include all forms of polystyrene #6 rigid plastics. This legislation would also prohibit the retail sale of all polystyrene (rigid and expanded) food service products.

Polystyrene products are thermoplastic petrochemical materials that come in two principle forms: a clear or colored rigid form; and an expanded or foam form. Since 2016, Montgomery County has banned the sale and use of expanded polystyrene food service ware and packaging materials. Furthermore, since 2017, Montgomery County has required all food service establishments to use food service ware that is either recyclable in Montgomery County or compostable.

Polystyrene in any form, rigid or expanded, is not recyclable in Montgomery County for a number of economic and logistical reasons. These include a lack of polystyrene recycling facilities in the region, the material's low density making it cost prohibitive to ship long distances for recycling, and an absence of entities (anyone, including manufacturers or brokers) seeking to purchase #6 bales for processing and use to make new products.

Further, we know from our ongoing efforts to market recyclable commodities that #6 rigid polystyrene is not considered valuable or desirable in mixed #3–#7 plastic bales. One reason for this is because there are not large quantities of #6 rigid polystyrene in the waste/recycling stream, which make it difficult to gather and consolidate the amounts of the material needed to make recycling cost effective.

Another reason is that the majority of #6 rigid polystyrene materials that are in the waste/recycling stream are colored plastics (e.g., red solo cups), which are difficult to recycle into other products because of the added color. In addition, a lot of the #6 rigid polystyrene items are used for food contact products, but they cannot be recycled and remanufactured into other food contact products due to FDA regulations. Finally, there are not many non-food contact grade uses for #6 rigid polystyrene, so there is little to no demand for recycled feedstock. For these reasons, it is typically easier and cheaper to produce new/virgin polystyrene than it is to collect, transport, and process used polystyrene materials for recycling.

To replace these banned single-use polystyrene food service products, DEP's Recycling and Resource Management Division (RRMD) has researched and identified numerous viable reusable, recyclable, and compostable alternative products on the market today. These alternative products include wood, bamboo, and paper products which are compostable, #1 pet thermoform and #5 polypropylene products which are recyclable, and several different types of plant-based compostable products. Per the existing requirements of Chapter 48, The Department of Environmental Protection maintains and updates a listing of these alternative products which is available on the County's website.

If you have any questions, please contact Adam Ortiz, Director, Department of Environmental Protection, at 240-777-7781. Thank you for your attention to this matter.

Attachments:

Proposed Legislation

Legislative Request Report

cc: Adam Ortiz, Director, DEP

Patty Bubar, Deputy Director, DEP