

**RESOLUTION NO. 275-2019, ADOPTING LOCAL LAW
NO. 14 -2019, A LOCAL LAW TO PROHIBIT THE USE OF
POLYSTYRENE FOAM CONTAINERS IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 13, 2019, a proposed local law entitled, "**A LOCAL LAW TO PROHIBIT THE USE OF POLYSTYRENE FOAM CONTAINERS IN SUFFOLK COUNTY**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 14 -2019, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROHIBIT THE USE OF POLYSTYRENE
FOAM CONTAINERS IN SUFFOLK COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that polystyrene foam is a petroleum-based plastic made from a styrene monomer. Styrene has been classified as a probable human carcinogen by the International Agency for Research on Cancer (IARC), a non-governmental body of the World Health Organization and a potential human carcinogen by the United States Department of Health and Human Services.

This Legislature finds that the Environmental Protection Agency has determined that the polystyrene manufacturing process is the fifth largest creator of hazardous waste in the United States.

This Legislature also finds and determines that polystyrene foam is a common environmental pollutant and non-biodegradable substance commonly used in food service items. There exists no practical method to recycle polystyrene and incineration of polystyrene releases toxic fumes.

This Legislature further determines that alternative biodegradable food service items are readily available to meet the vast majority of food service needs.

This Legislature finds that the use of biodegradable and/or compostable food service products will reduce the waste stream in Suffolk County and provide a commensurate reduction in waste disposal costs.

This Legislature determines that the County should encourage the use of biodegradable food service containers by all food service businesses and should restrict the use of polystyrene containers.

This Legislature also finds that polystyrene foam is also used frequently in packaging that is being transported in order to protect fragile items.

This Legislature further finds that there are many environmentally friendly alternatives that can be used when shipping delicate items.

This Legislature also determines that to further protect the County from polystyrene pollution, certain types of polystyrene items should be banned from use.

Therefore, the purpose of this law is to ban the use of certain polystyrene items in Suffolk County.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

DISPOSABLE FOOD SERVICE ITEM – cups, containers, lids, closures, trays, plates, knives, forks, spoons, stoppers, paddles, straws, place mats, napkins, doilies, wrapping materials, tooth picks and all similar articles that are intended by the manufacturer to be used once for the purposes of eating or drinking or that are generally recognized by the public as items to be discarded after one use.

FOOD SERVICE ESTABLISHMENT – a premises or part of a premises where food is prepared and served or given directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. This definition shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, grocery stores, vending trucks, vending carts and cafeterias.

MANUFACTURER – Any natural person, firm or corporation that produces or imports either polystyrene foam or loose fill packaging.

MOBILE FOOD COMMISSARY – any facility which provides services to food service establishments that are located in or is a pushcart, stand or vehicle, including, but not limited to: access to potable water, waste water and refuse disposal, the provision of supplies for food service, storage for food and supplies, or commercial cooking facilities.

POLYSTYRENE FOAM – any blown polystyrene foam, including expanded or extruded foams (commonly referred to as Styrofoam) which are thermoplastic petrochemical materials which utilize a styrene monomer and are processed by any number of techniques, including, but not limited to: fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion blow molding. This definition shall not include products composed of rigid polystyrene.

POLYSTYRENE LOOSE FILL PACKAGING – a void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing peanuts.

RIGID POLYSTYRENE – thermoplastic petrochemical materials which utilize a styrene monomer but are not blown polystyrene foam.

STORE – a retail or wholesale establishment other than a food service establishment.

Section 3. Prohibition.

- A. No food service establishment, mobile food commissary or store shall possess, sell or offer for use any disposable food service item that consists of polystyrene foam. This prohibition shall not apply to packaging that is used for prepackaged foods that have been filled and sealed prior to receipt by the food service establishment, mobile food commissary, or store or to containers used to store uncooked eggs, raw meat, pork, fish, seafood or poultry sold from a butcher case or similar retail use.
- B. No manufacturer or store shall sell or offer for sale polystyrene loose fill packaging. This prohibition shall not apply to the retail sale of electronics that are packaged in polystyrene loose fill packaging prior to entering the store.

Section 4. Enforcement.

- A. This law shall be enforced by the Department of Health Services.
- B. Enforcement shall be done upon inspection by the Department of Health Services, where applicable, or upon complaint.

Section 5. Penalties.

- A. Violation of this law shall be punishable by a civil fine. First offenses shall be punishable by a fine of up to \$500. Second offenses shall be punishable by a fine of up to \$1,000. Third and subsequent offenses shall be punishable by a fine of up to \$2,500. Each violation of this law shall be considered separate and distinct.
- B. No fine shall be imposed until an alleged violator has had a hearing and opportunity to be heard by the Commissioner of the Department of Health Services.

Section 6. Rules and Regulations.

The Commissioner of the Department of Health Services is hereby authorized to promulgate rules and regulations necessary to implement and enforce this local law.

Section 7. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 8. Reverse Preemption.

This local law shall be null and void on the day that federal and statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via duly enacted resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purpose of triggering the provision of this section.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on January 1, 2020.

DATED: April 9, 2019

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: April 26, 2019

After a public hearing duly held on April 25, 2019
Filed with the Secretary of State on May 9, 2019