

Bill No. 41-14  
Concerning: Solid Waste (Trash) – Food  
Service Products – Packaging  
Materials – Requirements  
Revised: October 30, 2014 Draft No. 6  
Introduced: September 9, 2014  
Enacted: January 20, 2015  
Executive: January 28, 2015  
Effective: January 1, 2016  
§ 48-54(c) January 1, 2017  
Sunset Date: None  
Ch. 1, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Riemer, Council Vice President Leventhal and Councilmember Elrich

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**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

<b>Boldface</b>	<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 selling 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 unless the  
 73           Executive determines that there is no suitable affordable compostable or  
 74           recyclable product available in accordance with Section 48-57.;;  
 75           provided, that this]] This subsection does not apply to:
- 76           (1) prepackaged food or beverages that were filled and sealed outside  
 77           of the County before a food service business received them; or  
 78           (2) materials used to package raw, uncooked, or butchered meat, fish,  
 79           poultry, or seafood for off-premises consumption.

80 **48-55. Education and outreach; [[Recyclable]] recyclable and compostable food**  
 81 **service ware list.**

82           (a) Education and outreach. The Executive must conduct an education  
 83           and outreach campaign before and during implementation of the  
 84           provisions of this Article. This campaign should include:

85           (1) informational mailers to and direct contact with affected  
 86           businesses; and

87           (2) distribution of information through County internet and web-  
 88           based resources; and

89           (3) news releases and news events.

90           (b) No later than 180 days after the effective date of this Act, the Executive  
 91           must publish a list of vendors offering affordable compostable or  
 92           recyclable disposable food service ware products. The Executive must  
 93           review and update this list annually for at least 5 years after it is first  
 94           published.

95           **48-56. Prohibition on sale.**

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

97           (a) expanded polystyrene food service products; or

98           (b) polystyrene loose fill packaging.

99           **48-57. Exemptions.**

100           If the Executive determines that there is no available affordable compostable  
 101           or recyclable alternative to a disposable food service ware item, this item must be  
 102           listed on an exemption list and made available to the public. Sections 48-53 and 48-  
 103           54 do not apply to a disposable food service ware item on the exemption list or for  
 104           the first 6 months after an item is removed from the list. The Executive must review  
 105           and update the exemption list annually to determine whether any items should be  
 106           removed because an affordable compostable or recyclable alternative has become  
 107           available.

108           **48-58. Enforcement.**

- 109        (a)    Any violation of this Article is a class B civil violation. Each day a  
110                    violation exists is a separate offense.
- 111        (b)    The County Attorney [[or any affected party]] may file an action in a  
112                    court with jurisdiction to enjoin repeated violations of the Section.

113        **Sec. 2. Effective date.**

- 114        (a)    The prohibition on use of expanded polystyrene food service products  
115                    contained in Section 48-53 and the prohibition on the sale of expanded  
116                    polystyrene food service products and polystyrene loose fill packaging  
117                    contained in Section 48-56 take effect on January 1, 2016.
- 118        (b)    The requirement for a County facility, agency, department, contractor,  
119                    or lessee to use compostable or recyclable disposable food service ware  
120                    established by Subsections 48-54 (a) and (b) takes effect [[90 days after  
121                    this Act becomes law]] on January 1, 2016. Notwithstanding any other  
122                    provision, a County facility, agency, department, contractor, or lessee  
123                    may use disposable food service ware already purchased as of the  
124                    effective date of this Act until the supplies are exhausted or until  
125                    January 1, 2017, whichever is earlier, including disposable food service  
126                    ware that the County facility, agency, department, contractor or lessee is  
127                    obligated to purchase under any contracts in force on the effective date  
128                    of this Act.
- 129        (c)    The requirement to use compostable or recyclable disposable food  
130                    service ware established by Subsection 48-54(c) takes effect on January  
131                    1, 2017.

132 *Approved:*

133 George Leventhal 1/22/15  
George Leventhal, President, County Council Date

134 *Approved:*

135 Isiah Leggett Jan 28, 2015  
Isiah Leggett, County Executive Date

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

137 Linda M. Lauer 1/30/15  
Linda M. Lauer, Clerk of the Council Date