

Legistar ID No.: \_\_\_\_\_

**AGENDA REQUEST FORM**

**FOR: Council Meeting of August 3, 2021**

**FROM: Council Member Teresa Turk**

**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

**AN ORDINANCE TO AMEND § 114.10 REGULATION OF EXPANDED  
POLYSTYRENE (EPS) FOAM SINGLE-USE PLATES, BOWLS, CLAMSHELLS,  
CUPS AND SIMILAR PRODUCTS TO COMPLY WITH ACT 751 OF 2021**

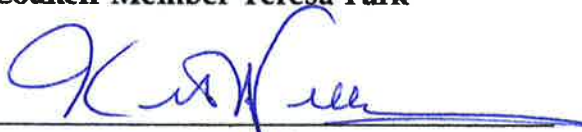
**APPROVED FOR AGENDA:**



**Council Member Teresa Turk**

7/16/21

Date



**City Attorney Kit Williams**

Approved

July 16, 2021

Date



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

TO: Mayor Jordan City Council

Kit Williams City Attorney
Blake Pennington Assistant City Attorney
Jodi Batker Paralegal

CC: Susan Norton, Chief of Staff
Peter Nierengarten, Environmental Director
Environmental Action Committee

FROM: Kit Williams, City Attorney

[Handwritten signature]

DATE: July 14, 2021

RE: §114.10 Regulation of Expanded Polystyrene (EPS) Foam Single-Use Plates, Bowls, Clamshells, Cups and Similar Products

Ordinance 6185 passed on May 21, 2019 prohibited the City's purchase of EPS single use utensils and requested that EPS single use utensils not be allowed to be used by "concession stands, boat docks, food trucks or similar businesses on City owned property including all City owned parks and City owned off-street parking lots ..." This ordinance was not codified as a more comprehensive EPS (Styrofoam) single use containers and utensils regulation was being prepared.

On November 5, 2019, the City Council enacted Ordinance 6250, An Ordinance To Enact §114.10 Regulation of Expanded Polystyrene (EPS) Foam Single-Use Plates, Bowls, Clamshells, Cups and Similar Products.

Act 751 of 2021 appeared to be directed at our Styrofoam regulatory ordinance and invalidated many of its provisions. "Except as provided under subsection (c) of this section, a municipality or county shall not restrict, tax, prohibit, or otherwise regulate the use, disposition, or sale of auxiliary containers." A.C.A. § 14-1-104(b).

"(c) A municipality or county may:

...

(2) Regulate the use of auxiliary containers on property owned or maintained by the municipality or county." A.C.A. § 14-1-104(c)

This statutory authority expressly granted to cities the right to regulate the broadly defined "auxiliary containers." This means that the Fayetteville Code's §114.10 **Regulation of Expanded Polystyrene (EPS) Foam Single-Use Plates, Bowls, Clamshells, Cups and Similar Products** may still be applied to concession stands, food trucks and caterers operating on city property. Thus, all food trucks and caterers operating on city owned or maintained property which would include all city parks, all city streets, and all city parking lots can be prohibited from using any ESP single-use auxiliary containers while on city property which would include our street right-of-way. Similarly, any caterer using the city owned Fayetteville Town Center can still be prohibited from using single-use EPS auxiliary containers.

To accomplish this, the City Council will need to amend subsections (C) *Application* and (D) *Prohibited Use of Expanded Polystyrene Foam Single-Use Products* of §114.10 of the *Fayetteville Code*. I have attached the current *Code* section to this memo. Below is how I would recommend that the amended subsections would read:

"(C) *Application*. These regulations shall apply to all food trucks, concessionaires, caterers and other prepared, ready-to-eat food or drink providers operating on city owned or maintained property.

(D) *Prohibited Use of Expanded Polystyrene Foam Single-Use Products*. No single-use expanded polystyrene foam products including plates, bowls, clamshells, cups, and similar products may be provided by any food truck operator, concessionaire, caterer, or other prepared, ready-to-eat food or drink provider while on or operating on city owned or maintained property."

I will prepare the needed ordinance which will make §114.10 compliant with the new state law which will be effective on July 28<sup>th</sup>. This amendment will continue to enable the City to prevent food and drink commercial operations from distributing EPS foam single-use products in our parks, parking lots and streets. We cannot legally do more, but at least we can proactively reduce the litter and bad ecological effects of EPS foam products for our parks and other city property (including the Fayetteville Town Center).

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H3/23/21 H4/6/21

# A Bill

HOUSE BILL 1704

5 By: Representative Ray  
6 By: Senator D. Sullivan  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE LAW TO PROHIBIT MUNICIPALITIES  
10 AND COUNTIES FROM RESTRICTING THE USE OF AUXILIARY  
11 CONTAINERS; AND FOR OTHER PURPOSES.  
12  
13

### Subtitle

14  
15 TO AMEND THE LAW TO PROHIBIT  
16 MUNICIPALITIES AND COUNTIES FROM  
17 RESTRICTING THE USE OF AUXILIARY  
18 CONTAINERS.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code Title 14, Chapter 1, Subchapter 1, is amended  
24 to add an additional section to read as follows:

25 14-1-104. Auxiliary containers – Definition.

26 (a) As used in this section, "auxiliary container" means a bag, cup,  
27 package, container, bottle, device, or other packaging that is without  
28 limitation:

29 (1) Made of cloth, paper, plastic, foamed plastic, expanded  
30 plastic, cardboard, corrugated material, aluminum, glass, postconsumer  
31 recycled material, or similar coated or laminated material; and

32 (2) Designed for the consumption, transportation, or protection  
33 of merchandise, food, or beverage at a food service facility, manufacturing  
34 facility, distribution facility, processing facility, or retail facility.

35 (b) Except as provided under subsection (c) of this section, a  
36 municipality or county shall not restrict, tax, prohibit, or otherwise



1 regulate the use, disposition, or sale of auxiliary containers.

2 (c) A municipality or county may:

3 (1) Operate a recycling program, a composting program, and a  
4 solid waste disposal program; and

5 (2) Regulate the use of auxiliary containers on property owned  
6 or maintained by the municipality or county.

7 (d) This section does not:

8 (1) Affect a general state or local sales and use tax;

9 (2) Prevent a municipality or county from restricting the use of  
10 glass containers within the municipality or county based on public safety  
11 concerns;

12 (3) Prevent a municipality or county from passing or enforcing  
13 an ordinance that prohibits littering, if the ordinance complies with the  
14 Litter Control Act, § 8-6-401 et seq.; or

15 (4) Prevent a municipality from setting by ordinance reasonable  
16 standards for the regulation of alcohol possession within the boundaries of a  
17 designated entertainment district under § 14-54-1412.

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/s/Ray

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APPROVED: 4/19/21

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113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

**Ordinance: 6185**

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**File Number: 2019-0122**

**POLYSTYRENE FOAM PRODUCTS:**

AN ORDINANCE TO PROHIBIT THE PURCHASE OF EXPANDED POLYSTYRENE FOAM WITH CITY OF FAYETTEVILLE MONIES, TO END THE USE OF EXPANDED POLYSTYRENE FOAM PRODUCTS BY CITY CONCESSIONAIRES AND FOOD TRUCKS IN CITY PARKS AND CITY OFF-STREET PARKING LOTS AND TO RAISE PUBLIC AWARENESS OF THE ECOLOGICAL DAMAGES CAUSED BY THIS PRODUCT

**WHEREAS**, items of Expanded Polystyrene Foam (commonly referred to by the brand name "Styrofoam") are one of the top ten most littered items in our country and cause unsightly litter that necessitates time consuming and difficult cleanup efforts; and,

**WHEREAS**, this Expanded Polystyrene Foam does not biodegrade, but rather breaks down into smaller particles that pollute our natural and built environment; and,

**WHEREAS**, this foam is made from the monomer styrene, which is a suspected human carcinogen and known neurotoxin; and,

**WHEREAS**, the City of Fayetteville should ban most of the uses and purchases of Expanded Polystyrene Foam by the City; and,

**WHEREAS**, the City Council of the City of Fayetteville declares it is in the best interest of the health and welfare of its residents, visitors, and employees to reduce the litter and pollutants on the land and in the waters of Fayetteville; and,

**WHEREAS**, the City of Fayetteville is dedicated to reducing the volume of items entering our landfill through holistic recycling programs; and,

**WHEREAS**, although the City of Fayetteville has a robust recycling program, it is not feasible, practical nor effective to attempt to recycle Expanded Polystyrene Foam; and,

**WHEREAS**, there are readily available and reasonable cost alternatives to Expanded Polystyrene Foam that can be recycled or composted by Fayetteville.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby prohibits the purchase of Expanded Polystyrene (EPS) Foam products by all City Departments, with the exception of encapsulated EPS for dock flotation and construction materials used for insulation structural stability, weight reduction or formwork remaining in place post-occupancy. The City Council further prohibits any businesses, including but not limited to catering companies, from providing Expanded Polystyrene Foam products such as plates, bowls and cups when the City of Fayetteville has purchased their services.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby requests that the Administration ensure through appropriate contracts or otherwise that all entities operating concession stands, boat docks, food trucks, or similar businesses on City owned property including all city owned parks and city owned off-street parking lots end as soon as possible any purchasing and use of any Expanded Polystyrene Foam products such as plates, bowls, cups, and similar items. The City Council hereby empowers the Administration to bar food trucks that stock, supply to customers or otherwise use Expanded Polystyrene Foam products from serving customers while in any city owned off-street parking lot or city owned park by November 1, 2019.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby requests that the University of Arkansas Board of Trustees, the Fayetteville School Board, the Advertising and Promotion Commission and the governing bodies of the Fayetteville Public Library, Walton Arts Center and Theatre Squared join in this effort to promptly reduce and soon eliminate the use of Expanded Polystyrene Foam products within their facilities and prohibit caterers from bringing such products into their facilities.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby determines that acceptable alternative to EPS Foam products include, but are not limited to, paper, fiber and compostable products.

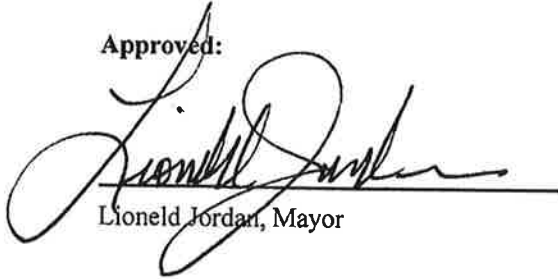
Section 5. That the City Council of the City of Fayetteville, Arkansas hereby further agrees to support the general goal of reducing EPS Foam product use by citizens, other government entities, and

File Number: 2019-0122  
Ordinance 6185


businesses throughout the City of Fayetteville by promoting awareness of the issues surrounding Expanded Polystyrene Foam and by promoting the adoption of reasonably priced alternatives.

PASSED and APPROVED on 5/21/2019

Approved:

  
Lioneld Jordan, Mayor

Attest:

  
Lisa Branson, Deputy City Clerk





- (C) *Articles Permitted to Be Sold.* Only objects of art or craft produced and sold by a local artist or craftsperson may be sold at the First Thursday Fayetteville event. The Fayetteville Convention and Visitors Bureau is empowered to assign precise locations for any vendors wishing to display or sell their personally created art or craft work.
- (D) *Sanitation.* At the close of a vendor's operation (no later than 10:00 p.m.), the vendor shall clean the immediate area around the vendor's operation and ensure that all trash and debris are removed and properly discarded.
- (Ord. No. 5307, 3-16-10; Ord. No. 5392, 3-15-10; Ord. No. 5487, 3-6-12; Ord. No. 5682, 4-15-14)

**114.04—114.09 Reserved**

**114.10 Regulation Of Expanded Polystyrene (EPS) Foam Single-Use Plates, Bowls, Clamshells, Cups And Similar Products**

- (A) *Purpose.* Expanded polystyrene (EPS) foam single-use products break down in the environment into tiny pieces which become virtually impossible pickup or clean from the environment and travel through the air and water causing worldwide pollution, damage to the environment and health risks to many living things. The City Council has determined it is vital to our citizen's health and especially to our water supply of Beaver Lake that the amount of EPS that can escape into our environment should be reduced as much as possible. Furthermore, there are many other products that can be reused, recycled or composted which are readily available at a reasonable cost that can substitute for EPS Foam products.
- (B) *Benefits for Fayetteville Citizens.* Substantial reduction in the use of EPS single-use products will substantially reduce unsightly and unhealthful litter and the taxpayers' expense of cleaning up such litter as much as possible. Keeping as much EPS out of Beaver Lake as possible will ensure better and more healthy water quality with less expense for the Beaver Water District to attempt to remove EPS from our drinking water. Switching to reusable, recyclable or compostable products will reduce the volumes required to be landfilled, the cost of disposal and the life of current landfills.
- (C) *Application.* These regulations shall apply to restaurants; hotels; grocery stores with delis or food bars; cafeterias; convenience stores; coffee, tea and donut shops; caterers; and any other prepared, ready-to-eat food or drink providers.
- (D) *Prohibited Use of Expanded Polystyrene Foam Single-Use Products.* No single-use expanded polystyrene foam product including plates, bowls, clamshells, cups, and similar products may be provided by any restaurant, hotel, grocery store for its deli or food bar, cafeteria, convenience store, coffee, tea or donut shop, caterer or other prepared, ready-to-eat food or drink provider.
- (E) *Exemption.* The Mayor may grant temporary exemption from this prohibition if necessitated by an emergency, a public health and safety need or medical necessity. The City Council may grant a permanent exemption by amending this Code section.
- (Ord. No. 6250, §1, 11-5-19)