

DRAFT

Regulation of the Lenox Board of Health Restricting the use of Thin-Film Shopping Bags

1. Findings and Intent

WHEREAS, the Town has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, the production and use of Thin-Film Shopping Bags have significant impacts on the environment, including, but not limited to

- contributing to pollution of the land environment and waterways;
- contributing to the potential death of terrestrial and marine wildlife;
- clogging storm drainage systems and accumulating in wastewater systems;
- littering the town's streets, parks, public spaces, and local waterways¹; and

WHEREAS, Thin-Film Shopping Bags are made from non-renewable fossil fuels and are non-essential²; and

WHEREAS, Thin-Film Shopping Bags are neither biodegradable nor compostable³; and

WHEREAS, Thin-Film Shopping Bags cannot be recycled through curb-side waste collection⁴ and are often not otherwise recycled; and

WHEREAS, some of the waste generated in Lenox ends up in landfills in other municipalities⁵, with the potential for Thin-Film Shopping Bags to litter the surrounding areas; and

WHEREAS, the costs associated with the use and distribution of Thin-Film Shopping Bags are borne by Retail Establishments and passed on to customers; and

WHEREAS, Thin-Film Shopping Bags can be a source of endocrine disruptors having potential health impacts⁶; and

WHEREAS, affordable, environmentally responsible alternatives, including Reusable Shopping Bags and bags made of Bioplastic Materials, are readily available from numerous sources and vendors; and

WHEREAS, tourism is vital to Lenox's economy and an increasing number of municipalities whose residents recreate in the Berkshires because of its natural beauty and pristine environmental image have acted to reduce the use of Thin-Film Shopping Bags; and

WHEREAS, numerous neighboring communities and others in our region have acted or are in the process of acting to reduce the use of Thin-Film Shopping bags; and

WHEREAS, one-size-fits-all bills regulating Thin-Film Shopping Bags have been introduced in the state legislature, and Lenox still has the opportunity to tailor a regulation to its needs and desires; and

WHEREAS, many Establishments in Lenox do not use Thin-Film Shopping Bags and many residents have also stopped using them.

NOW THEREFORE, the Lenox Board of Health intends to regulate the use of Thin-Film Shopping Bags within the town and to promote the use of reusable bags.

2. Authority

This regulation is promulgated to the authority granted to the Lenox Board of Health by Massachusetts General Laws Chapter 111, Section 31 that “Boards of Health may make reasonable health regulations.”

3. Definitions

Bioplastic Materials: Substances made from renewable, organic, biomass sources – living organisms and their residues – such as agricultural byproducts, vegetable fats and oils, corn starch, or microbiota, rather than fossil fuels. For purposes of this regulation, bags made of Bioplastic Materials must be Compostable.

Compostable: Conforming to the most current ASTM D6400 standard for compostability.

Establishment: Any operation that provides goods – including food and/or beverages – and/or services directly to consumers, with or without charge; sporadic, temporary, part- or full-time; commercial, non-profit, religious, educational, foundation-related, or governmental; whether on private, public, religious, or school property. Examples include, without limitation, grocery stores, pharmacies, liquor stores, convenience stores, restaurants, retail stores, farmers’ markets, school or church fund-raising activities, or other events.

Polyethylene: Any of various lightweight thermoplastic resins made by polymerizing ethylene, a flammable hydrocarbon gas primarily occurring in natural gas, coal gas, and crude oil chiefly used for plastic bags, food containers, and other packaging.

Raw Food and Bulk Item Bags: Bags used by customers to package bulk items, such as fruit, vegetables, nuts, grains, candy, hardware, pharmacy, or other items; contain or wrap fresh or frozen foods, including meat, or fish, whether pre-packaged or not; or contain or wrap flowers, potted plants, or other items where dampness may be a problem. These bags are typically thinner than plastic carryout bags and generally do not have handles.

Recyclable Paper Bags: Paper bags with or without handles provided at the checkout stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise from the Establishment and that (1) are one-hundred percent (100%) recyclable, (2) contain a minimum of forty percent (40%) postconsumer recycled paper content, and (3) have all the following information printed in a visible manner on the outside of the bag: the word

“recyclable,” the name and country of the manufacturer, and the percentage of post-consumer recycled paper content.

Reusable Shopping Bags: Sewn bags with stitched handles that (1) are specifically designed and manufactured for multiple reuse; (2) can comfortably carry 25 pounds over a distance of 300 feet; (3) can hold a minimum of 15 liters; (4) can be readily washed or disinfected by hand or machine; and, (5) are made of either (a) natural fibers (such as cotton or linen); or (b) durable, non-toxic plastic other than Polyethylene or polyvinyl chloride that is generally considered a food-grade material and is more than 4 mils thick. The following information must be printed in a visible manner on the outside of the bags or on permanent tags: the name of the manufacturer; the country of manufacture; a true statement that the bag does not contain lead, cadmium, or other heavy metals in toxic amounts; the percent of post-consumer recycled material used in the bag, if any; and a statement recommending regular cleaning or disinfection.

Thin-Film Shopping Bags: Bags provided at the checkout stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise from the establishment that have handles, are made of Polyethylene or other plastic, and have a thickness of less than 4.0 mils.

4. Use Regulations

- a) Nothing in this regulation prohibits customers from using bags or other containers of any type that they bring to Establishments themselves or from carrying away goods that are not placed in a bag, in lieu of using bags or other containers provided by Establishments.
- b) Establishments shall be permitted to make available to customers at the checkout stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise from the Establishments only Reusable Shopping Bags or Recyclable Paper Bags as provided in this regulation or cardboard boxes, with or without charge.
- c) No Establishment shall make available any plastic bags, with or without a fee, that are made of Polyethylene.
- d) Any Raw Food and Bulk Item Bags made available by Establishments must be made of Bioplastic Materials; 100 percent (100%) recyclable paper made with at least forty percent (40%) postconsumer recycled material; FDA-approved Compostable cellophane or other cellulosic material; or Compostable unbleached wax paper made with non-petroleum-based wax.

5. List of Approved Alternatives

Not later than 180 days following the adoption of this regulation, the Lenox Board of Health or its designee shall adopt a list that it shall periodically update of approved and available alternatives for each product type, including those cited in this bylaw as well as any approved additional ones, which meet such criteria as being non-toxic, Compostable, or reusable.

6. Exemptions and Deferment

- a) Nothing in this regulation prohibits customers from using bags or containers of any type that they bring to Establishments themselves or from carrying away goods that are not placed in a bag or other container, in lieu of using bags provided by Establishments.
- b) All Establishments must provide at the point of sale, free of charge, either Reusable Shopping Bags or Recyclable Paper Bags or both, at the Establishment's option, to any customer participating either in the Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to M.G.L. c. 111, or in the Supplemental Nutrition Assistance (SNAP) Program pursuant to M.G.L. c. 18, or to any non-profit corporation or other charity as defined by M.G.L. c. 12 that distribute food, grocery products, clothing, or other household items to clients.
- c) The provisions of this regulation do not apply to bags used by a non-profit corporation or other charity as defined by M.G.L. c. 12 to distribute food, grocery products, clothing, or other household items to clients.
- d) This regulation does not prevent Establishments from selling to customers various types of plastic bags sold in packages containing multiple bags intended for personal use.
- e) Establishments will be exempted from the provisions of this regulation for so long as the Lenox Board of Health or its designee finds that a suitable alternative does not exist for a specific application.
- f) Upon written request to the Lenox Board of Health or its designee and demonstration of how this regulation would cause undue hardship to the Establishment, such Establishment may receive temporary deferment of this regulation to their operation for up to six (6) months. Establishments may apply to the deferment process in accordance with the following:
 - 1) An application for deferment must include all information necessary for the Lenox Board of Health or its designee to make its decision, including but not limited to documentation showing the factual support of undue hardship for the claimed deferment. "Undue hardship" is defined as a situation unique to the Establishment in which there are no reasonable alternatives to the use of Thin-Film Shopping Bags or to comply with the requirement that Raw Food

and Bulk Item Bags be made of Bioplastic Materials, and compliance with this regulation would create significant economic hardship for the Establishment and its operators. The Lenox Board of Health or its designee may request additional documentation from the applicant to make a decision regarding deferment, which it may issue with or without conditions. All deferment applications are final and effective immediately.

- 2) An Establishment that receives a deferment must reapply prior to the end of that period and continue to demonstrate undue hardship if its operators seek to continue their deferment. Deferments may only be granted for periods of up to two (2) years.

7. Enforcement, Violations, and Penalties

- a) The Lenox Board of Health or its designee shall have the authority to enforce this regulation. Enforcement shall include:
 - 1) inspection and investigation when it deems appropriate or in response to citizen complaints;
 - 2) the issuance of violation notices and administrative orders; and/or
 - 3) civil court actions.
- b) Whoever, himself or by his servant or agent or as the servant or agent of any other person or firm or corporation, violates any of the provisions of these regulations may be penalized by a non-criminal disposition process as provided in MGL c. 40, §21D. Each day of violation, after written notice, is a separate violation.
- c) The following penalties shall apply:
 - 1) First offense: Warning
 - 2) Second offense: \$50
 - 3) Third offense: \$100
 - 4) Fourth and subsequent offense: \$200
- d) The Lenox Board of Health or its designee may suspend, revoke, or deny any license or permit for repeat and flagrant violations of this regulation.

8. Severability

Each section of this regulation shall be construed as separate to the end that if any section, sentence, clause, or phrase thereof shall be held invalid for any reason, the remainder of this regulation and all other regulations shall continue in full force.

9. Effective Date

This regulation shall take effect twelve (12) months after its adoption.

Lenox Board of Health, Chair

Date

Lenox Board of Health, Vice Chair

Date

Lenox Board of Health, Clerk

Date

¹ http://www.earth-policy.org/press_room/C68/plastic_bags_fact_sheethttp://www.earth-policy.org/press_room/C68/plastic_bags_fact_sheet; personal communication Sean T. VanDeusen, Superintendent of Public Works, Town of Lenox, Massachusetts.

² Kenneth S. Whiteley, T. Geoffrey Heggs, Hartmut Koch, Ralph L. Mawer, Wolfgang Immel, "Polyolefins" in Ullmann's Encyclopedia of Industrial Chemistry 2005, Wiley-VCH, Weinheim. doi:10.1002/14356007.a21_487

³ <http://www.gazettenet.com/news/specialcoverage/goinggreen/17581752-95/exploring-alternatives-as-bans-on-single-use-plastic-bags-become-more-common>

⁴ <http://www.republicservices.com/residents/all-in-one-recycling>

⁵ Personal communication with Daley and Sons.

⁶ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222987/> (Table 1)