

## Background Information for Bylaws Proposed by the Lee Recycling Committee

**Why We're Here:** Our proposed bylaws reflect extensive research and community outreach/input prompted by the highly complex, petitioned warrant articles sprung on the town at last year's Town Meeting. In June the Select Board charged us to explore in an inclusive manner the issues associated with polystyrene containers and thin-film shopping bags, as well as regulatory options. We've done so. We kept the bylaws short and summarize them on the next two pages. We're also developing an education and implementation plan to help residents, tourists, and businesses make the transition.

**Tailored for Lee:** While seeking to reduce environmental and waste disposal problems and potential health risks, we did our best to include provisions that addressed public questions and comments (our responses to these are posted at [www.tritownhealth.org](http://www.tritownhealth.org)). For example:

- Both bylaws—
  - protect consumers' freedom and flexibility;
  - protect businesses when no alternatives exist and to avoid undue hardships;
  - require the Board of Health to approve new options as new products research emerges; and
  - provide for a long transition.
- The shopping bag bylaw—
  - avoids financial burdens on individuals and non-profits/charities that can least afford them;
  - defines bag alternatives that minimize the potential of making the situation worse;
  - requires that reusable bags be free of heavy metals, identify where they're made, and include a reminder to wash or disinfect them regularly; and
  - keeps other plastic bags people are used to.

In this way and by learning from others, we tailored the bylaws for Lee, as well as Lenox and Stockbridge, our partners in the Tri-Town Health District, with whom we're striving to have consistent measures so enforcement is as efficient as possible. We think this highly customized approach better serves our town than one-size-fits all legislation that the state will inevitably pass.

**Benefits:** Adopting and implementing the bylaws will offer significant benefits. Reducing the use of polystyrene drink and food containers and thin-film plastic shopping bags will help decrease potential health risks and will reduce litter. Eliminating these products – some of which ends up in landfills elsewhere or floats down the Housatonic River to the coast – will also reduce waste disposal, recycling, and environmental impacts. Taking these steps will make walking around town more enjoyable for residents and visitors and increase community pride by demonstrating we care for the greater good within and beyond our boundaries. It will also send a powerful message to our children that we want them to inherit a safer, cleaner, and more sustainable world.

**Why Now:** Major investments – from the bikeway along 102 and the Housatonic River and recreation area improvements to the Eagle Mill redevelopment – as well as important promotional efforts will bring more people to Lee. Plus, a rapidly growing cross-section of communities whose residents vacation here is covered by the type of waste reduction efforts we're proposing. And state action – which will never respond to local concerns the way our bylaws do – will come: the state food association is moving in the direction of supporting it; filed bills are being strengthened; and Boston, a key to state action, is surrounded by places with these regulations, and might well adopt a plastic bag ordinance this year.

**We Can Do It:** Will most of us have to make some changes? Yes. Can we do it? Businesses and residents in Lee already have, so the answer has to be yes – and it probably won't be as hard as some people expect. By doing so we'll send a green message that is consistent with the image of the Berkshires and meets the growing expectations of tourists, who in many ways are our lifeblood. The results: a more attractive, sustainable community – what we all want for Lee. Working together we can do it. We hope you will support both bylaws.

## SUMMARY OF KEY PROVISIONS AND RATIONALE

### GOALS

- Make Lee more sustainable and attractive to residents, tourists, and businesses by reducing the use of these containers and bags (and their environmental and waste disposal impacts and potential health risks) and promoting reusable and recyclable/compostable options
- Maximize enforcement efficiency across the Tri-Town Health Department’s communities
- Minimize the need to revise the bylaws by learning from others and charging the Board of Health or its designee with the responsibility of expanding the list of approved alternatives as new products are developed and research is published.

### POLYSTYRENE

Provision	Rationale/Explanation
<p><b>Regulations</b></p> <ul style="list-style-type: none"> <li>• Consumers may use their own containers.</li> <li>• Food establishments – broadly defined – cannot use or provide food and drink containers made of foam or rigid polystyrene.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw regulates food establishments, not consumers.</li> <li>• Reducing the use of polystyrene reduces environmental and waste issues as well as potential health risks.</li> </ul>
<p><b>Alternatives</b></p> <ul style="list-style-type: none"> <li>• Starting six months after adoption (and six months before the bylaw goes into effect), the Lee Board of Health or its designee will publish a list of approved alternatives, and then periodically update it.</li> </ul>	<ul style="list-style-type: none"> <li>• Used by other communities, this provision enables the Board of Health to react in a timely manner to new product development and research re health risks.</li> </ul>
<p><b>Exemptions</b></p> <ul style="list-style-type: none"> <li>• Residents and visitors may purchase packaged food and drink containers made of polystyrene for their personal use.</li> <li>• Food or drink prepared or packaged outside of Lee are exempted.</li> <li>• Specific applications of food establishments are exempted for as long as the Lee Board of Health or its designee has not identified an approved alternative.</li> <li>• The Lee Board of Health or its designee may grant deferments in six month increments for up to two years to food establishments that demonstrate compliance would cause an undue hardship.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw doesn’t regulate consumers.</li> <li>• The bylaw only regulates what happens in Lee.</li> <li>• This provision protects food establishments by recognizing that sound alternatives for all applications might not yet exist.</li> <li>• This provision avoids undue hardship for food establishments, reflecting a desire to help, not hurt, Lee’s economy.</li> </ul>
<p><b>Enforcement, Violations, and Penalties</b></p> <ul style="list-style-type: none"> <li>• The Lee Board of Health or its designee will be the enforcing agency.</li> <li>• Citizen complaints trigger investigations.</li> <li>• The sequence of penalties is: first violation – warning; second violation - \$50; third violation - \$100; fourth and subsequent violations - \$200.</li> <li>• Repeat and flagrant violations may lead to license/permits denial, suspension, or revocation.</li> </ul>	<ul style="list-style-type: none"> <li>• Health agencies commonly enforce these regulations.</li> <li>• This is consistent with current policies.</li> <li>• Because of the change, warnings are important. Through education and support we hope never to impose a penalty.</li> <li>• This provision is used elsewhere and serves as a last resort for the good of the community.</li> </ul>
<p><b>Effective Date:</b> 12 months from adoption (plus 90-day State review)</p>	<ul style="list-style-type: none"> <li>• Gives plenty of transition time for most establishments.</li> </ul>

## THIN-FILM PLASTIC BAGS

Provision	Rationale/Explanation
<p><b>Regulations</b></p> <ul style="list-style-type: none"> <li>• Consumers may use whatever bags or other containers they want.</li> <li>• At checkout, establishments (broadly defined) may only provide, with or without charge, high-quality, reusable shopping bags and recyclable paper bags (both as defined in the bylaw) as well as cardboard boxes.</li> <li>• Establishments may not provide bags made of polyethylene.</li> <li>• Raw food and bulk item bags provided by establishments must be made of compostable bioplastics.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw regulates establishments, not consumers.</li> <li>• This offers safer and more environmentally friendly options, while trying to avoid unintended consequences and giving establishments freedom to charge or not.</li> <li>• This avoids one of the worst plastics for this purpose.</li> <li>• This provision keeps many commonly used bags, but in a safer and more environmentally friendly way.</li> </ul>
<p><b>Alternatives</b></p> <ul style="list-style-type: none"> <li>• Starting six months after adoption (and six months before the bylaw goes into effect), the Lee Board of Health or its designee will publish a list of approved alternatives, and then periodically update it.</li> </ul>	<ul style="list-style-type: none"> <li>• Used by other communities, this provision enables the Board of Health to react in a timely manner to new product development and research re health risks.</li> </ul>
<p><b>Exemptions</b></p> <ul style="list-style-type: none"> <li>• Residents and visitors may use whatever bags or other containers they want to bring when shopping.</li> <li>• Participants in the WIC or SNAP programs and non-profits or charities that distribute goods to clients do not have to pay for recyclable paper bags or, at the establishment’s discretion, reusable bags.</li> <li>• Non-profits and charities that distribute goods to clients are exempt.</li> <li>• Establishments may sell plastic bags contained in packages of multiple units intended for customers’ personal use.</li> <li>• Specific applications of establishments are exempted for as long as the Lee Board of Health or its designee has not identified an approved alternative.</li> <li>• The Lee Board of Health or its designee may grant deferments in six month increments up to two years to Food Establishments that demonstrate compliance would cause an undue hardship.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw doesn’t regulate consumers.</li> <li>• This provision minimizes the impact of the bylaw on those who can least afford it by tapping into the savings businesses realize through the regulations.</li> <li>• This ensures funds go where they’re most needed.</li> <li>• This provision reflects the philosophy that the bylaw does not regulate customers.</li> <li>• This provision provides flexibility for establishments by recognizing that sound alternatives for all applications might not yet exist.</li> <li>• This provision avoids undue hardship on food establishments, reflecting a desire to help, not hurt, Lee’s economy.</li> </ul>
<p><b>Enforcement, Violations, and Penalties</b></p> <ul style="list-style-type: none"> <li>• The Lee Board of Health or its designee will be the enforcing agency</li> <li>• Citizen complaints can trigger investigations</li> <li>• The sequence of penalties is: first violation – warning; second violation - \$50; third violation - \$100; fourth and subsequent violations - \$200</li> <li>• Repeat and flagrant violations may lead to license/permits denial, suspension, or revocation.</li> </ul>	<ul style="list-style-type: none"> <li>• Health agencies commonly enforce these regulations.</li> <li>• This is consistent with current policies.</li> <li>• Because of the change, warnings are important. Through education and support we hope never to impose a penalty.</li> <li>• This provision is used elsewhere and serves as a last resort for the good of the community.</li> </ul>
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