

TRI-TOWN HEALTH DEPARTMENT
Lee - Lenox – Stockbridge

TOWN OF LENOX BOARD OF HEALTH

Amended April 6, 2017

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

1. Findings and Intent

WHEREAS, the Town of Lenox Board of Health has a duty to protect the environment, 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 waterwaysⁱ; and

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

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

WHEREAS, Thin-Film Shopping Bags cannot be recycled through curb-side waste collection^{iv} and are often not otherwise recycled; 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 impacts^v; and

WHEREAS, affordable, environmentally responsible alternatives, including Reusable Shopping Bags and Recyclable Paper Bags are readily available from numerous sources and vendors; and

WHEREAS, tourism is vital to Lenox's economy and 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, some establishments in Lenox are currently supplying customers with Reusable Shopping Bags and many residents have also stopped using Thin Filmed Shopping Bags.

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

2. Authority

This regulation is promulgated by 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

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

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 or Bulk Item Bags (Often referred to as produce 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, and (2) contain a minimum of forty percent (40%) postconsumer recycled paper content.

Reusable Shopping Bags: Sewn bags with stitched handles that:

- (1) Are specifically designed and manufactured for multiple reuse;
- (2) Can be readily washed or disinfected by hand or machine; and,
- (3) are made of either (a) natural fibers (such as cotton or linen); or (b) durable, non-toxic plastic that is generally considered a food-grade material and is 4 mils or more thick.

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) Establishments shall 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.
- b) No Establishment shall make available any Thin Filmed Plastic bags, as defined in this regulation with or without a fee, other than Reusable Shopping Bags or Recyclable Paper Bags.

5. List of Approved Alternatives

Not later than 180 days following the adoption of this bylaw, 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. The approved alternatives shall be (1) appropriate for the respective product type; (2) consistent with the other provisions of this bylaw; (3) made of materials that (a) in the near term may be partially or entirely fossil-fuel based; (b) are non-toxic according to the then most current research; and (c) compostable, biodegradable (other than oxo-, hydro-, or thermo-degradable, and not including materials containing potentially harmful or incompatible additives for facilitating or accelerating degradation), or recyclable and/or reusable as established by certified compliance with then current ASTM standards, if any, or, in their absence, specifications established by the Board of Health or its designee; and (4) meet such other criteria as the Board of Health or its designee shall establish from time to time.

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) 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.
- c) This regulation does not prevent Establishments from selling to customers various types of plastic bags sold in packages containing multiple bags intended for personal or commercial use.
- d) 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.

- e) Produce, Dry Cleaning, Newspaper and Pet Waste Bags, are not regulated or restricted under this regulation.
- 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, 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 decisions are final and effective immediately, upon issuance in writing from the Lenox Board of Health or its designee.
 - 2) An Establishment that receives a deferment must reapply at least sixty (60) days prior to the end of that period and continue to demonstrate undue hardship if its operators seek to continue their deferment. A maximum of four (4)- six (6) month deferments are allowed.

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 or administrative orders; or
 - 3) civil court actions.
- b) Any establishment that violates any of the provisions of this regulation 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 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 and any amendments shall take effect on June 9, 2017. Amendment approved on April 6, 2017 by its board members.

Lenox Board of Health

Date

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ⁱ 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.

ⁱⁱ 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<http://www.sustainableamerica.org/blog/the-plastic-bag-problem/>

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

^{iv} <http://www.republicservices.com/residents/all-in-one-recycling>

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