Polystyrene Reduction Bylaw

To see if the Town will vote to adopt the following bylaw:

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, styrene, a component of Polystyrene, is classified by the National Toxicology Program (NTP) as "reasonably anticipated to be a human carcinogen" and also recognized by the NTP as a potential food and beverage contaminant that may "leach from Polystyrene containers used for food products"; and

WHEREAS, the US Environmental Protection Agency (EPA) states "that such materials can also have serious impacts on human health, wildlife, the aquatic environment, and the economy"; and

WHEREAS, Polystyrene is made from non-renewable fossil fuels, and Polystyrene manufacture and disposal requires substantial energy consumption and contributes to greenhouse gases and other adverse environmental effects; and

WHEREAS, Polystyrene is not biodegradable or compostable, and cannot be practically recycled; and

WHEREAS, some of the waste generated in Lee ends up in landfills in other communities, with the potential for Polystyrene to litter the surrounding areas; and

WHEREAS, affordable and effective ways exist to reduce the negative impacts of Polystyrene products through the use of safer, more sustainable, and environmentally friendly materials; and

WHEREAS, Polystyrene Disposable Food Containers constitute a portion of the litter in Lee's streets, parks, and public places, thereby adversely affecting the attractiveness of the town and the enjoyment of residents and visitors, and requires time, effort, and expense to clean up; and

WHEREAS, tourism is vital to Lee'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 Polystyrene in Disposable Food Containers; and

WHEREAS, numerous neighboring communities and others in our region have acted or are in the process of acting to reduce the use of Polystyrene in Disposable Food Containers; and

WHEREAS, one-size-fits-all bills regulating Polystyrene have been introduced in the state legislature, and Lee still has the opportunity to tailor a bylaw to its needs and desires; and

WHEREAS, some Food Establishments in Lee have stopped using Polystyrene Disposable Food Containers.

NOW THEREFORE, the Town of Lee hereby enacts this bylaw to prohibit the use and distribution of foam and rigid Polystyrene in Disposable Food Containers and require the use and

distribution of Disposable Food Containers made of safer, more sustainable, and environmentally friendly materials.

2. Definitions

The following words and phrases shall, unless context clearly indicates otherwise, have the following meanings:

Disposable Food Container: All containers – bowls, plates, trays, cartons, cups, lids, and hinged or lidded containers – designed for one-time or non-durable use that are used by food establishments for heating, storing, packaging, serving, or transporting prepared or ready-to-consume food or beverages. This includes any containers used by Food Establishments to heat, cook, or store food or beverages prior to serving, regardless of whether such containers are used to serve such food or beverages.

Food Establishment: An operation that, with or without charge, stores, prepares, packages, serves, vends, or otherwise provides food or beverages for human consumption, as further defined in 105 CMR 590.000 et. seq., Massachusetts State Food Code or any other local board of health rules and regulations shall be considered a Food Establishment for purposes of this bylaw. Food Establishment shall also include any operation, sporadic, temporary, part- or full-time; commercial, non-profit, religious, educational, foundation-related, or governmental; whether on private, public, religious, or school property; that, with or without charge, stores, prepares, packages, serves, vends, or otherwise provides food or beverages for human consumption. This definition shall not apply to individual citizens or visitors preparing and serving food or beverages for personal use.

Polystyrene: Blown polystyrene and expanded and extruded foams, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term also refers to clear or solid polystyrene, also known as “oriented” or “rigid” polystyrene.

3. Use Regulations

a) Nothing in this bylaw prohibits customers from using containers of any type that they bring to Food Establishments themselves to contain any food or beverage they are acquiring, nor shall anything in this bylaw prohibit individual residents or visitors from purchasing or using Disposable Food Containers made from Polystyrene for personal use.

b) No Food Establishment shall use Disposable Food Containers made from Polystyrene to prepare, heat, store, serve, transport, or provide food or beverages to customers.

4. List of Approved Alternatives

Not later than 180 days following the adoption of this bylaw, the Lee Board of Health or its designee shall adopt a list that it shall periodically update of approved and available alternatives for each product type. 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.

5. Exemptions and Deferment

a) Foods prepared or packaged outside the Town of Lee are exempt from the provisions of this bylaw.

b) This regulation does not prevent retail establishments from selling to customers various types of products made from Polystyrene and sold in packages containing multiple units intended for personal use.

c) Food Establishments will be exempted from the provisions of this bylaw for specific items or types of Disposable Food Containers for so long as the Lee Board of Health or its designee finds that a suitable alternative does not exist for a specific application.

d) Upon written request to the Lee Board of Health or its designee and demonstration of how this bylaw would cause undue hardship to the Food Establishment, such Food Establishment may receive temporary deferment of this bylaw to their operation for up to six (6) months. Food Establishments may apply to the deferment process in accordance with the following:

    1) An application for deferment must include all information necessary for the Lee 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 Food Establishment in which there are no reasonable alternatives to the use of Polystyrene Disposable Food Containers and compliance with this bylaw would create significant economic hardship for the Food Establishment and its operators. The Lee 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) A Food 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.

6. Enforcement, Violations, and Penalties

a) The Lee Board of Health or its designee shall establish and update rules and regulations to implement this bylaw and shall have the authority to enforce it by:

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 this bylaw 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 Lee Board of Health or its designee may suspend, revoke, or deny any license or permit for repeat and flagrant violations of this bylaw.

7. Severability

Each section of this bylaw 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 bylaw and all other bylaws shall continue in full force.

8. Effective Date

The bylaw shall take effect twelve (12) months after its adoption.