

TRI-TOWN HEALTH DEPARTMENT
Lee - Lenox – Stockbridge

TOWN OF LENOX BOARD OF HEALTH

Regulation of the Lenox Board of Health Restricting the use of Polystyrene Disposable Food Containers in Food Establishments

1. Findings and Intent

WHEREAS, the Town of Lenox Board of Health has a duty to protect the natural environment, 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”ⁱ; 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"ⁱⁱ; and

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

WHEREAS, Polystyrene is not biodegradable or compostable, and cannot be practically recycled^{iv}; 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, Disposable Food Containers constitute a portion of the litter in Lenox’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 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 Polystyrene Disposable Food Containers; and

WHEREAS, some Food Establishments in Lenox do not use Polystyrene Disposable Food Containers.

NOW THEREFORE, the Lenox Board of Health intends to regulate and restrict the purchase, sale, distribution, and use of foam Disposable Food Containers by Food Establishments to

45 Railroad Street-Lee, MA 01238
Tel: 413-243-5540- Fax: 413-243-5542
Email: info@tritownhealth.org

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Suzanne M Scarpa
Suzanne M Scarpa

prepare or serve food or drinks and to require the use and distribution of Disposable Food Containers made of safer, more sustainable, and environmentally friendly materials.

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

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

Disposable Food Container: All disposable 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 regulation. 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.

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).

4. Use Regulations

- a) No Food Establishment shall use or sell Disposable Food Containers made from Polystyrene to prepare, heat, store, serve, transport, or provide food or beverages to customers.
- b) Nothing in this regulation prohibits customers from using containers of any type that they bring to Food Establishments themselves to contain any food or beverage they are acquiring.

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. 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 shall prohibit individual residents or visitors from purchasing or using Disposable Food Containers made from Polystyrene for personal use.
- b) This regulation does not include single use utensils, nor does it include single use disposable packaging for unprepared foods. The Lenox Board of Health or its legal designee shall have the final decision on what is or what is not a Disposable Food Container.
- c) Foods prepared and packaged outside the Town of Lenox are also exempt from the provisions of this regulation.
- d) This regulation does not prevent establishments from selling to customers various types of products made from Polystyrene and sold in packages containing multiple units intended for personal use.
- e) Food Establishments will be exempted from the provisions of this regulation for specific items or types of Disposable Food Containers 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) Individual citizens or visitors preparing and serving food or beverages for personal use are not restricted from using Polystyrene Disposable Food Containers under this regulation.
- g) Upon written request to the Lenox Board of Health or its designee and demonstration of how this regulation would cause undue hardship to the Food Establishment, such Food Establishment may receive temporary deferment of this regulation 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 Lenox Board of Health or its designee to make its decision, including but not

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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 regulation would create significant economic hardship for the Food 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) A Food 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 Food 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 shall take effect on June 9, 2017

Lenox Board of Health, Chair

Date

Lenox Board of Health

Date

Lenox Board of Health

Date

Date Regulation ratified: 6/9/16

Town Clerk Attested Date: 6/13/16

Date of Published Notice of Public Hearing: May 16, 2016

Date of Summary Regulation Published in Public Newspaper: 6/15/16

Date Submitted to MA DEP Central Registry: 8/1/16

ⁱ National Toxicology Program, (NTP) (2014), *13th Report on Carcinogens (RoC)* (Substance Profile (Styrene). Retrieved from: <http://ntp.niehs.nih.gov/ntp/roc/content/profiles/styrene.pdf>.

ⁱⁱ Assessing and Monitoring Floatable Debris, US Environmental Protection Agency. August, 2002.

ⁱⁱⁱ The Way To Go, (2008), *Polystyrene Fact Sheets*. Retrieved from: <http://isites.harvard.edu/fs/docs/icb.topic967858.files/PolystyreneFactSheets.pdf>.

^{iv} The Way To Go, (2008), *Polystyrene Fact Sheets*. Retrieved from: <http://isites.harvard.edu/fs/docs/icb.topic967858.files/PolystyreneFactSheets.pdf>.