

studies of the lake, or to take any other action relative thereto. **Finance Committee recommends approval.**

**Article 43. Berkshire Brownfields Program**

To see if the Town will vote to raise and appropriate or to transfer from available funds the sum of \$2,000, or any other amount, for the Berkshire Regional Planning Commission to continue its Berkshire Brownfields Program, or to take any other action relative thereto. **Finance Committee recommends approval.**

**Article 44. Streetlight Control Cabinet Replacement**

To see if the Town will vote to raise and appropriate or to transfer from available funds the sum of \$8,210, or any other amount, to purchase and install a streetlight control cabinet damaged by an unknown motorist, or to take any other action relative thereto. **Finance Committee recommends approval.**

**Article 45. Town Hall Copy Machine Replacement**

To see if the Town will vote to raise and appropriate or to transfer from available funds the sum of \$9,850, or any other amount, to purchase a new copy machine, or to take any other action relative thereto. **Finance Committee recommends approval.**

**Article 46. Thin-Film Shopping Bag 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, 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 waterways; and

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

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

WHEREAS, Thin-Film Shopping Bags cannot be recycled through curbside waste collection and are often not otherwise recycled; and

WHEREAS, some of the waste generated in Lee ends up in landfills in other municipalities, 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 impacts; 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 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 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 legislature, and Lee still has the opportunity to tailor a bylaw to its needs and desires; and

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

NOW THEREFORE, the Town of Lee hereby enacts the following bylaw to regulate the use of Thin-Film Shopping Bags within the town and to promote the use of reusable bags.

## **2. 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 bylaw, 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 check 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.

### **3. Use Regulations**

- a) Nothing in this bylaw 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 bylaw 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.

#### **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, 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.

#### **5. Exemptions and Deferment**

- a. 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 distributes food, grocery products, clothing, or other household items to clients.
- b. The provisions of this bylaw 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 bylaw does not prevent Establishments from selling to customers various types of plastic bags sold in packages containing multiple bags intended for personal use.
- d. Establishments will be exempted from the provisions of this bylaw for so long as the Lee Board of Health or its designee finds that a suitable alternative does not exist for a specific application.
- e. Upon written request to the Lee Board of Health or its designee and demonstration of how this bylaw would cause undue hardship to the establishment, such Establishment may receive temporary deferment of this bylaw 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 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 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 bylaw would create significant economic hardship for the 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) 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.

## **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 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 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.

## **Article 47. 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.

### **3. Exemptions and Deferment**

- a) Foods prepared or packaged outside the Town of Lee are also 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

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