

## **ARTICLE 34. BOARD OF HEALTH (Amended ATM 2025)**

34.1. Membership. The Town shall have an elected Board of Health (for purposes of this Article 34, the "Board") consisting of three registered voters of the Town.

34.2. Term. The term of office shall be three years.

34.3. General Duties. The Board shall have the duties and powers of Boards of Health under the General Laws, particularly G.L. c. 111. These include protecting and preserving the health and well-being of the public.

34.4. Director. The Board shall appoint a Director of Public Health and other personnel as it deems necessary.

34.5. Regulations. All regulations made by the Board under G.L. c. 111 shall be published once in a newspaper generally circulated in the Town. Such publication shall be notice to all persons.

34.5A. Clean Indoor Air in Food Service Establishments.

### **Section I. Definitions**

- a. Smoking shall mean the lighting of, or having possession of any lighted cigarette, cigar, pipe or other tobacco product.
- b. Food Service Establishment shall mean any establishment which is required by state law to be licensed by the Board of Health in accordance with the provisions of the State Sanitary Code, Chapter X "Minimum Sanitation Standards for Food Service Establishments", in order to prepare and serve food to the general public.
- c. Nonsmoking area means that area in the dining area of a food service establishment where smoking by employer or patron is prohibited.
- d. Smoking areas mean all other areas of food service establishments except where smoking is prohibited by sanitation or fire safety codes or regulations.

### **Section II. Regulated Conduct**

- a. No person shall smoke in any establishment required to be licensed as a Food Service Establishment except in specifically designated smoking areas.
- b. Smoking areas may be designated by proprietors or other persons in charge of the above establishment, except in places in which smoking is prohibited by the Chief Fire Engineer or by other law or regulation. Designated smoking areas shall comprise no more than 75% of the establishment. Where smoking areas are designated existing physical barriers and/or ventilation systems shall be used to minimize the effects of smoke on persons in adjacent nonsmoking areas.
- c. In the case of establishments consisting of a single room the requirement of this bylaw shall be considered met, if one side of the room is reserved and posted as a nonsmoking area, and provided that no less than 25% of the seating capacity is designated as a nonsmoking area.

### **Section III. Exemptions**

- a. Establishments with a seating capacity of less than 40 persons are exempt from this bylaw.
- b. In cases where an entire establishment or room in an establishment is taken over for a private function, this bylaw shall not apply.
- c. Establishments that have voluntarily provided a designated nonsmoking area as requested by the Board of Health shall be exempt from this bylaw for as long as their voluntary system is maintained.

### **Section IV. Implementation and Enforcement**

- a. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the nonsmoking area by:
  - i. posting appropriate signs;
  - ii. arranging seating so that existing physical barriers and ventilation systems minimize the effects of smoking in a smoking area upon patrons in an adjacent nonsmoking area;

- iii. directing patrons seated in nonsmoking areas to refrain from smoking; and
- iv. any other means which may be appropriate.
- b. The Board of Health may adopt rules and regulations to help effectuate the purpose of this bylaw.
- c. Any person who smokes in a nonsmoking area after notice from the person in charge that such conduct violates this bylaw shall be subject to a fine of not less than ten (10) dollars or more than thirty (30) dollars.
- d. The Board of Health or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provision of the bylaw may seek injunctive or other relief to enforce the provisions of this bylaw in a court of competent jurisdiction.
- e. Nothing in this bylaw shall make lawful smoking in any area which smoking is or hereafter be prohibited by law.

#### Section V Severability

- a. If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

#### 34.5B. Clean Indoor Air in Public Buildings.

##### Section I. Definitions

- a. Public Buildings as used in this bylaw shall mean every public building owned and controlled by the Town.
- b. Smoking shall mean the lighting of any cigar, cigarette, pipe or other tobacco product.

##### Section II. Regulated Conduct

- a. There shall be no smoking in any Public Building. This prohibition shall extend to all enclosed structures owned or operated by the Town.

##### Section III. Implementation and Enforcement

- a. Any person who smokes in a nonsmoking area after notice from the person in charge that such conduct violates this bylaw shall be subject to a fine of not less than ten (10) dollars or more than thirty (30) dollars.
- b. The Board of Health or any person aggrieved by the willful failure of the proprietor or other person in charge of a work place to comply with any provision of the bylaw may seek injunctive or other relief to enforce the provisions of this bylaw in a court of competent jurisdiction.
- c. Nothing in this bylaw shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

##### Section IV. Severability

- a. If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

#### 34.5C. Single-Use Plastic Check-Out Bag Reduction. (New Section ATM 2016.)

##### Section I. Findings and Purpose

Plastic check-out bags have a significant impact on the marine and terrestrial environment, including but not limited to: 1) harming marine and terrestrial animals through ingestion and entanglement; 2) polluting and degrading the terrestrial and marine environments; 3) clogging storm drainage systems; 4) creating a burden for solid waste disposal and recycling facilities; 5) requiring the use of non-renewable fossil-fuel in their composition. Studies have shown that even alternative “compostable” or “biodegradable” bags require very specific and controlled conditions in order to biodegrade, and have potentially negative environmental effects similar to conventional plastic bags. Such bags should therefore be subject to the same restrictions as conventional plastic check-out bags.

The purpose of this bylaw is to protect the Town's unique natural beauty and irreplaceable natural resources by reducing the number of single-use plastic check-out bags that are distributed in the Town and to promote the use of reusable bags.

## Section II. Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

- a. "Check-Out Bag" shall mean a bag provided by a store to a customer at the point of sale. Check-Out Bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of the store.
- b. "Department" shall mean the Wellesley Health Department.
- c. "Health Agent" shall mean the Health Agent for the Board of Health or his/her designee.
- d. "Recyclable Paper Bag" shall mean a paper bag that is 100% recyclable and contains at least 40% post-consumer recycled content, and displays in a visible manner on the outside of the bag (1) the word "recyclable" or a symbol identifying the bag as recyclable and (2) a label identifying the bag as being made from post-consumer recycled content and the percentage of post-consumer recycled content in the bag.
- e. "Reusable Check-Out Bag" shall mean a sewn bag with stitched handles that is specifically designed for multiple reuse and that (1) can carry 25 pounds over a distance of 300 feet; (2) is machine washable; and, (3) is either (a) made of natural fibers (such as cotton or linen); or (b) made of durable, non-toxic plastic other than polyethylene or polyvinyl chloride that is generally considered a food-grade material that is more than 4 mils thick.
- f. "Retail Establishment" shall mean any business facility that sells goods directly to the consumer whether for or not for profit, including, but not limited to, retail stores, restaurants, pharmacies, convenience and grocery stores, liquor stores, and seasonal and temporary businesses.
- g. "Thin-Film, Single-Use Plastic Check-Out Bags" shall mean those bags typically with handles, constructed of high-density polyethylene (HDPE), low density polyethylene (LDPE), linear low density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET), or polypropylene (other than woven and non-woven polypropylene fabric), if said film is less than 4.0 mils in thickness.

## Section III. Regulated Conduct

- a. No Retail Establishment in the Town shall provide Thin-Film, Single-Use Plastic Check-Out Bags to customers.
- b. If a Retail Establishment provides or sells Check-Out Bags to customers, the bags must be one of the following:
  - i. Recyclable Paper Bag; or
  - ii. Reusable Check-Out Bag.

## Section IV. Exemption

Thin-film plastic bags typically without handles which are used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items, and other similar merchandise are not prohibited under this bylaw.

## Section V. Enforcement

- a. The Board of Health and its Health Agent shall have the authority to administer and enforce this bylaw.
- b. For the first violation, the enforcing authority, upon a determination that a violation has occurred, shall issue a written warning notice to the establishment specifying the violation.
- c. The following penalties shall apply:
  - i. A fine of \$50 shall apply for the first violation following the issuance of a written warning notice.

- ii. A fine of \$100 shall apply for the second violation and each additional violation of this by-law after the issuance of a written warning notice.
- d. Fines shall be cumulative and each day on which a violation occurs shall constitute a separate offense.

#### Section VI. Effective Date

- a. This bylaw shall take effect six (6) months following approval of the bylaw by the Attorney General or on January 1, 2017, whichever is later for Retail Establishments with a floor area equal to or exceeding 3,500 square feet or with at least two (2) locations under the same name within the Town that total 3,500 square feet or more. This bylaw shall take effect one (1) year after passage for Retail Establishments less than 3,500 square feet. The Director may exempt a Retail Establishment from the requirements of this section for a period of up to six (6) months upon a finding by the Director that (1) the requirements of this section would cause undue hardship; or (2) a Retail Establishment requires additional time in order to draw down an existing inventory of Thin-Film, Single-Use Plastic Check-Out Bags.

#### Section VII. Regulations

- a. The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this bylaw.

#### Section VIII. Severability

- a. If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.

34.6. General Provisions. The Board shall also be governed by Articles 2 through 7 of these bylaws and other provisions of these bylaws applicable generally to all Boards, except as it is specifically directed by law or a provision of these bylaws to act otherwise.

### **34.5D Customer Opt-In For Single-Use Service Ware and Single Ware and Single Serving Packaged Condiments (Established ATM 2025.)**

#### **Section I Purpose**

The purpose of this Bylaw is to reduce single-use service ware and single-serving packaged condiments. For the health and welfare of our community and in accordance with the sustainability goals of Wellesley's Climate Action Plan, this bylaw serves a public purpose to minimize the impact of single-use items on the environment by advancing solid waste reduction and reducing the carbon footprint of Wellesley's businesses and residents.

#### **Section II Definitions**

- a. "Condiment" means a single-use packet containing relishes, spices, sauces, confections, or seasonings, that requires no additional preparation by the Consumer, and that is used with food or beverages, including, but not limited to, creamer, ketchup, mustard, mayonnaise, soy sauce, wasabi, sauerkraut, salsa, syrup, jam, jelly, salad dressings, salt, sugar, sugar substitutes, pepper, and chili pepper.
- b. "Consumer" and "Customer" shall mean the individual purchasing Prepared Food for consumption by themselves or others, or where the Prepared Food is provided for free, the individual who will be collecting the Prepared Food for consumption by themselves or others.
- c. "Director" means the Director of Community and Public Health of the Town of Wellesley.
- d. "Food Service Establishment" shall mean any establishment which is required by state law to be licensed by the Board of Health in accordance with the provisions of the State Sanitary Code, Chapter X "Minimum Sanitation Standards for Food Service Establishments," in order to prepare and serve food to the general public.
- e. "Online Food Ordering Platform" means a website or mobile application through which a Consumer can place an order for pick-up or delivery of Prepared Food. Such platforms include those

operated directly by a Food Service Establishment, by companies that provide delivery of Prepared Food to Consumers from Food Service Establishments, and by online food ordering systems that connect Consumers to a Food Service Establishment directly.

- f. "Prepared Food" means food or beverages that are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, poured, or otherwise prepared (collectively "prepared") in a Food Service Establishment for individual Customers or Consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.
- g. "Single-Use" means designed to be used once and then discarded and not designed for repeated use and sanitizing.
- h. "Single-Use Articles" means all types of items provided alongside Prepared Food that are intended for a Single-Use, including, but not limited to, Utensils, Condiments, napkins, straws, stirrers, splash sticks, cocktail sticks, toothpicks, cup sleeves, cup trays, and food trays.
- i. "Utensil" means a food contact implement including but not limited to forks, spoons, knives, sporks, chopsticks, tongs, or other instruments used to serve food or to eat food.

### **Section III Regulated Conduct**

a. Selection of Single-Use Articles:

1. A Food Service Establishment shall require Customers to specify which Single-Use Articles they want included with their Prepared Food when selecting or ordering Prepared Food in person or on the telephone. Food Service Establishments using an Online Food Ordering Platform shall provide the option to Customers to request Single-Use Articles with a Prepared Food order, when the Online Food Ordering Platform includes selection of Single-Use Articles as a feature.

2. As an alternative to Section III.a, Food Service Establishments may have Single-Use Articles available at self-service stations or on dining tables for the Customer to select and use.

- b. Providing of Single-Use Articles: Food Service Establishments shall not include a Single-Use Article with Prepared Food when the Customer does not request inclusion of such Single-Use Article, or, where applicable, the Online Food Ordering Platform used by the Food Service Establishment does not include a feature for Customers to indicate their preference for inclusion of Single-Use Articles.
- c. No Bundling Single-Use Articles: Single-Use Articles provided by Food Service Establishments for use by Customers shall not be bundled or packaged in a manner that prohibits a Customer from taking only the type of Single-Use Article desired without also having to take additional Single-Use Articles. For purposes of this bylaw, each type of Condiment and each type of Utensil shall be considered a separate Single-Use Article, meaning that a Consumer requesting a fork shall not be provided a package containing a fork, knife and spoon.

### **Section IV Enforcement**

- a. The Board of Health and its Health Agent shall have the authority to administer and enforce this bylaw.
- b. The Health Agent may issue citations under the non-criminal disposition procedure set forth in G.L. c. 40, §21D, Article 52 and as specified herein. Each day on which a violation occurs shall constitute a separate offense.
  - 1. First through third violation: Written warnings
  - 2. Fourth violation: \$50
  - 3. Fifth and each subsequent violation: \$100

### **Section V Exemptions**

Any Food Service Establishment may seek an exemption from the requirements of this bylaw by filing a request in writing with the Director. The request must identify the requested exemption and explain why  
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compliance would cause undue hardship. The Director may waive any specific requirement of this bylaw for an individual Food Service Establishment for a period of not more than one year. A Food Service Establishment granted a waiver must re-apply at least 60 (sixty) days prior to the end of the one-year exemption period and demonstrate continued undue hardship if the Food Service Establishment wishes to have the exemption extended. The Director's decision to grant or deny an exemption or to grant or deny an extension of a previously issued exemption shall be in writing and shall be final.

#### **Section VI Effective Date**

This bylaw shall take effect on January 1, 2026.

#### **Section VII Regulations**

The Board of Health may adopt and amend rules and regulations to effectuate the purposes of this bylaw.

#### **Section VIII Severability**

If any provision of this bylaw is declared invalid or unenforceable the other provisions shall not be affected thereby.