

**Regulation of the Winthrop Board of Health
to Prevent the Release of Black Plastic into the Environment**

Section 1. Statement of Purpose

It is the intention of the Winthrop Board of Health to prohibit the purchase, sale, distribution, and use of any black plastic disposable food service ware in any food establishment or retail establishment in Winthrop.

Section 2. Authority

This regulation is promulgated under the authority granted to the Winthrop Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

Section 3. Definitions

As used in this regulation, the following words shall have the following meanings unless the context clearly requires otherwise:

"Disposable Food Service Ware" shall mean single-use or disposable products for heating, storing, packaging, serving, consuming, or transporting prepared or ready-to-consume food or beverages including, but not limited to, bowls, plates, trays, cartons, cups, lids, hinged or lidded containers, spoons, forks and knives. 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. Disposable Food Service Ware also includes any such implements sold by Retail Establishments to consumers for personal use.

"Black Plastic" shall mean any plastic with any plastic resin codes #1-#7.

"Food Establishment" shall mean any operation that serves, vends, or otherwise provides food or other products to third parties for consumption and/or use on or off the premises, whether or not a fee is charged, but not including the service of food within a home or other private setting. Any facility requiring a food permit in accordance with the Massachusetts State Food Code, 105 CMR 590.000, et seq. and/or regulations of the Board of Health shall be considered a "food establishment" for purposes of this regulation.

"Health Agent" shall mean the Health Agent for the Town of Winthrop or his/her designee.

“Prepared Food” shall mean food or beverages, which are serviced, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared (collectively “prepared”) for individual customers or consumers. Prepared Food does not include raw eggs or raw, butchered meats, fish, seafood, and/or poultry.

“Retail Establishment” shall mean a store or premises engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises or the serving of an item directly to customers at such store or premises, including, but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including farmers markets and public markets; provided, however, that a “retail establishment” shall also include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable roadside stand used by a person from which to engage in such business directly with customers and business establishments without a storefront, including, but not limited to, a business delivering prepared foods or other food items, web-based or catalog business or delivery services used by a retail establishment; provided further, that a “retail establishment” shall include a non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type commercial retail businesses, whether or not for profit when engaging in such activity.

Section 4. Regulated Conduct

Six months after enactment of this regulation, no Food Establishment in Winthrop may use, sell, offer for sale, or otherwise distribute disposable food service ware made from black plastic.

Six months after enactment of this regulation, no Retail Establishment in Winthrop may sell, offer for sale, or otherwise distribute: 1. disposable food service ware made from black plastic. 2. meat trays, fish trays, seafood trays, vegetable trays, or egg cartons made in whole or in any part with black plastic.

Section 5. Exemption

a) Nothing in this regulation shall prohibit individuals from using disposable food service ware or other items made of black plastic purchased outside Winthrop for personal use. b) Prepared food packaged outside Winthrop is exempt from the provisions of this chapter, provided that it is sold or otherwise provided to the consumer in the same disposable food service ware in which it was originally packaged, and that the prepared food has not been altered or repackaged. c) The Board of Health of Winthrop may exempt a food establishment or retail establishment from any provision of this regulation for a period of up to six months upon written application by the owner or operator of that establishment. No exemption will be granted unless the Board of Health finds that (1) strict enforcement of the provision for which the exemption is sought would cause undue hardship; or (2) the food establishment or retail establishment requires additional time in order to draw down an existing inventory of a specific item regulated by this regulation.

For purposes of this regulation, “undue hardship” shall mean a situation unique to a food establishment or retail establishment in which there are no reasonable alternatives to the use of materials prohibited by this regulation, and that compliance with this regulation would create significant economic hardship for the Establishment.

Section 6. Enforcement

Health Agents of the Town of Winthrop shall also have the authority to enforce this regulation. This regulation may be enforced through any lawful means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L. c. 40 § 21D and Article VI of the General Bylaws. The Town of Winthrop may enforce this regulation or enjoin violations thereof through any lawful process or combination of processes, and the election of one remedy by the town shall not preclude enforcement through any other lawful means.

Violations of this regulation are punishable by a fine of up to \$300 per violation. Each successive day of noncompliance will count as a separate violation.

If non-criminal disposition is elected, then any Food or Retail Establishment that violates any provision of this regulation shall be subject to the following penalties:

First Offense: written warning

Second Offense: \$50 penalty

Third and each subsequent offense: \$300 penalty

Section 7. Regulations

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

Section 8. Interaction with Other Laws

In the case of a conflict between the requirements of this regulation and any other federal, state or local law concerning the materials regulated herein, the more stringent requirements shall apply.

Section 9. Severability

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

Section 10. Effective Date

This regulation shall take effect on XXXXXXXX X, 2022
