

# SENATE . . . . . No. 579

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Jason M. Lewis***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to reduce single-use plastics from the environment.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/1/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/8/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/10/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>6/2/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>7/13/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>7/13/2021</i>

# SENATE . . . . . No. 579

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 579) of Jason M. Lewis, Joanne M. Comerford and James B. Eldridge for legislation to reduce single-use plastics from the environment. Environment, Natural Resources and Agriculture.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act to reduce single-use plastics from the environment.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Prevent Plastic Grocery Bags from Entering the Environment

2           Title II of the General Laws is hereby amended by inserting after chapter 21O the  
3 following chapter:

4           CHAPTER 21P: PLASTIC BAG REDUCTION

5           Section 1. As used in this chapter, the following words shall have the following meanings  
6 unless the context clearly requires otherwise:

7           “Postconsumer recycled material”, a material that would otherwise be destined for solid  
8 waste disposal, having completed its intended end use and product life cycle. Postconsumer  
9 recycled material does not include materials and byproducts generated from, and commonly  
10 reused within, an original manufacturing and fabrication process.

11 “Recycled paper bag”, a paper bag that is (i) 100 per cent recyclable; (ii) contains a  
12 minimum of 40 per cent postconsumer recycled materials, provided, however, that an 8 pound or  
13 smaller recycled paper bag shall contain a minimum of 20 per cent postconsumer recycled  
14 material; and (iii) displays the words "Recyclable" and "made from 40% post-consumer recycled  
15 content" or other applicable amount in a visible manner on the outside of the bag.

16 “Reusable grocery bag”, a sewn bag with stitched handles that is (i) specifically designed  
17 and manufactured for at least 175 uses; (ii) can carry 25 pounds over a distance of 300 feet; and  
18 (iii) is made of cloth or other machine-washable fabric other than polyethylene or polyvinyl  
19 chloride.

20 “Single-use carryout bag”, a bag made of plastic, paper, or other material that is provided  
21 by a Retail establishment to a customer at the point of sale and that is not a recycled paper bag or  
22 a reusable grocery bag. A single-use carryout bag does not include the following: (i) a paper bag  
23 provided by a pharmacy to a customer purchasing a prescription medication; (ii) a non-handled  
24 bag used to protect items from damaging or contaminating other purchased items placed in a  
25 recycled paper bag, a reusable grocery bag; (iii) a bag provided to contain an unwrapped food  
26 item; or (iv) a non-handled bag that is designed to be placed over articles of clothing on a hanger.

27 “Retail establishment”, a store or premises in which a person is engaged in the retail  
28 business of selling or providing merchandise, goods, groceries, prepared take-out food and  
29 beverages for consumption off-premises or the servicing of an item, directly to customers at such  
30 store or premises, including, but not limited to, grocery stores, department stores, pharmacies,  
31 convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including  
32 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 retail businesses, whether or not for profit when engaging in such activity.

Section 2. (a) Eighteen months after the enactment of this law, a Retail establishment may only make available for purchase at the point of sale a reusable grocery bag, or recycled paper bag.

(b) For up to 180 days from the date of enactment, a Retail establishment may make available for purchase at the point of sale a single-use carryout bag, reusable grocery bag, or recycled paper bag.

(c) 180 days after the enactment of this law, a Retail establishment may make available for purchase a recycled paper bag, for a charge of \$0.10.

(d) 180 days after the enactment of this law, a Retail establishment may make available for purchase a reusable grocery bag, for a charge of no less than \$0.10.

(e) All moneys collected pursuant to this section shall be retained by the Retail establishment.

(f) The department of environmental protection shall promulgate regulations with regard to the enforcement of this chapter. The department of environmental protection shall establish a small business exemption process by which a Retail establishment may elect to be exempt from the provisions of subsections (b) through (d) of this section. A Retail establishment electing for said exemption must provide to the department a self-audit attesting that they meet the following criteria:

1. the owner of the Retail establishment has 3 or fewer store locations under the same ownership; and

2. each Retail establishment has less than 4,000 square feet of retail selling space; and

3. each Retail establishment has 15 or fewer employees employed at the store location; and either

4. the Retail establishment is not a food establishment as defined by 105 CMR 590.001(C); or

5. the Retail establishment provided to consumers at the point of sale less than 15,000 carry-out bags or checkout bags in total during the previous calendar year.

Section 3. Any municipality with an existing ordinance, rule, regulation or by-law banning or regulating single-use carryout bags, recycled paper bags, or reusable grocery bags in the commonwealth shall be null and void 180 days after the enactment of this law. The exclusive authority in regulating the labeling, distribution, sale, storage, transportation, use, and disposal of single-use carryout bags, recycled paper bags, and reusable grocery bags in the commonwealth shall be determined by this chapter.

74           SECTION 2. Reduce Polystyrene in the Environment

75           The General Laws are hereby amended by inserting after chapter 21P the following  
76 chapter:

77           Chapter 21Q.

78           Section 1. Definitions. As used in this chapter, the following words shall have the  
79 following meanings unless the context clearly requires otherwise:

80           “Disposable Food Service Ware” shall mean single-use or disposable products for  
81 heating, storing, packaging, serving, consuming, or transporting prepared or ready-to-consume  
82 food or beverages including, but not limited to, bowls, plates, trays, cartons, cups, lids, hinged or  
83 lidded containers, spoons, forks and knives. This includes any containers used by food  
84 establishments to heat, cook, or store food or beverages prior to serving, regardless of whether  
85 such containers are used to serve such food or beverages. Disposable Food Service Ware also  
86 includes any such implements sold by Retail Establishments to consumers for personal use.

87           “Foam Polystyrene” shall mean polystyrene in the form of a foam or expanded material,  
88 processed by any number of techniques including, but not limited to, fusion of polymer spheres  
89 (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding  
90 (extruded foam polystyrene).

91           “Food Establishment” shall mean any operation that serves, vends or otherwise provides  
92 food or other products to third-parties for consumption and/or use on or off the premises,  
93 whether or not a fee is charged, but not including the service of food within a home or other  
94 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 bylaw.

“Health Agent” shall mean the Health Agent for the city or town of the facility, or his/her designee.

“Packing Material” shall mean material used to hold, cushion, or protect items packed in a container for shipping transport or storage.

“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.

“Polystyrene” shall mean a synthetic polymer produced by polymerization of styrene monomer. Polystyrene includes both “Foam Polystyrene” and “Solid Polystyrene” as defined in this Bylaw. The International Resin Identification Code assigned to polystyrene materials is “6”. Polystyrene items may be identified by a "6" or "PS," either alone or in combination with other letters. The regulations and prohibitions relating to polystyrene in this law are intended to apply regardless of the presence or absence of an International Resin Identification Code or other identifying marks on the item.

“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.

“Solid Polystyrene” shall mean polystyrene, including clear (oriented) polystyrene, produced in a rigid form with minimal incorporation of air or other gas. Solid polystyrene is also referred to as ‘rigid polystyrene’.

## Section 2. Regulated Conduct

a. One year after passage of this Act, no Food Establishment in the Commonwealth of Massachusetts may use, sell, offer for sale, or otherwise distribute disposable food service ware made from foam polystyrene or solid polystyrene.

b. One year after passage of this Act, no Retail Establishment in the Commonwealth of Massachusetts may sell, offer for sale, or otherwise distribute: 1. disposable food service ware made from foam polystyrene or solid polystyrene 2. meat trays, fish trays, seafood trays, vegetable trays, or egg cartons made in whole or in any part with foam polystyrene or solid polystyrene 3. distributing packing materials, including packing peanuts and shipping boxes made in whole or in any part with foam polystyrene that is not wholly encapsulated within a



more durable material. 4. coolers, ice chests, or similar containers; pool or beach toys; and dock floats, mooring buoys, or anchor or navigation markers, which are made in whole or in any part with foam polystyrene that is not wholly encapsulated within a more durable material.

c. For the purposes of Section 2(b)(3), ‘distributing packing material’ does not include: 1. Re-using packing materials for shipping, transport, or storage within the same distribution system, where the packing materials are not sent to a customer or end user. 2. Receiving shipments within the Commonwealth that include polystyrene foam used as a packing material, provided that the goods were not packaged or repackaged within the Commonwealth of Massachusetts.

### Section 3. Exemption

a) Nothing in this chapter shall prohibit individuals from using disposable food service ware or other items made of polystyrene purchased outside the Commonwealth of Massachusetts for personal use. b) Prepared food packaged outside the Commonwealth of Massachusetts 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 Commonwealth of Massachusetts Department of Environmental Protection or the Board of Health of the city or town in which the food or retail establishment is located may exempt a food establishment or retail establishment from any provision of this chapter 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 Department of Environmental Protection or 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 chapter. For purposes of this chapter, “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 chapter, and that compliance with this chapter would create significant economic hardship for the Establishment.

#### Section 4. Enforcement

Health Agents of the cities and towns of the Commonwealth of Massachusetts shall also have the authority to enforce this chapter. This chapter 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 or city may enforce this chapter or enjoin violations thereof through any lawful process or combination of processes, and the election of one remedy by the town or city shall not preclude enforcement through any other lawful means.

Violations of this chapter 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 chapter shall be subject to the following penalties:

First Offense: written warning

Second Offense: \$50 penalty

Third and each subsequent offense: \$300 penalty

#### Section 5. Regulations

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

#### 184           Section 6. Interaction with Other Laws

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

#### 188           Section 7. Severability

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

### 191           SECTION 3. Reduce Plastic Straws in the Environment

192           The General Laws are hereby amended by inserting after chapter 21Q the following  
193 chapter:

#### 194           Chapter 21R.

195           Section 1. Definitions. As used in this chapter, the following words shall have the  
196 following meanings unless the context clearly requires otherwise:

197           “Disability” shall mean a physical, intellectual, or sensory impairment that substantially  
198 limits one or more major life activities.

199           “Disposable plastic straw, stirrer, or splash stick” shall mean a drinking straw, stirrer, or  
200 splash stick made predominantly from synthetic polymers and that is not a reusable straw, stirrer,  
201 or splash stick. A disposable plastic straw, stirrer, or splash stick shall also include items made in

202 whole or in part from synthetic polymers that are otherwise classified as ‘compostable’,  
203 ‘biodegradable’, ‘oxodegradable’, or ‘marine degradable’.

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

210 “Health Agent” shall mean the Health Agent for the city or town of the facility or his/her  
211 designee.

212 “Medical Condition” shall mean any illness, disease, or injury that requires medical  
213 treatment.

214 “Reusable straw, stirrer, or splash stick” shall mean a drinking straw, stirrer, or splash  
215 stick that is manufactured from durable materials, and is designed to be adequately and  
216 repeatedly cleaned and sanitized for reuse.

217 “Retail Establishment” shall mean a store or premises engaged in the retail business of  
218 selling or providing merchandise, goods, groceries, prepared take-out food and beverages for  
219 consumption off-premises or the serving of an item, directly to customers at such store or  
220 premises, including, but not limited to, grocery stores, department stores, clothing stores,  
221 pharmacies, convenience stores, restaurants, coffee shops and seasonal and temporary  
222 businesses, including farmers markets and public markets; provided, however, that a “retail  
223 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 2. Regulated Conduct

a. One year after passage of this Act, no food establishment in the Commonwealth of Massachusetts may provide a disposable plastic straw, stirrer, or splash stick, as such term is defined in this chapter, to a customer.

b. One year after passage of this Act, no food establishment in the Commonwealth of Massachusetts may provide a disposable straw, stirrer, or splash stick that is not a reusable straw, stirrer, or splash stick to a customer, except upon that customer’s specific request for such items or if the item is selected by a customer from a self-service dispenser.

c. One year after passage of this Act, retail establishments in the Commonwealth of Massachusetts are prohibited from selling or distributing disposable plastic straws, stirrers, or splash sticks to customers unless equivalent non-plastic or reusable straws, stirrers, or splash sticks are available for sale and are clearly labeled such that any customer can easily distinguish among the disposable plastic, disposable non-plastic, and reusable items.

## Section 3. Exemptions

a. Nothing in this bylaw shall prohibit individuals from bringing and using their own personal straws, stirrers, or splash sticks of any type for personal use in a food establishment. b. Food establishments may provide a disposable plastic straw, stirrer, or splash stick, upon request, to a person in need due to a disability or medical condition. c. The Department of Environmental Protections or the Board of Health or health agent of the city or town in which the establishment is located may exempt a food establishment or retail establishment from any provision of this chapter 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 Department or the Board of Health or health agent finds that the establishment requires additional time in order to draw down an existing inventory of a specific item regulated by this chapter.

#### Section 4. Enforcement

Health Agents shall have the authority to enforce this bylaw. This bylaw 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 city or town may enforce this chapter or enjoin violations thereof through any lawful process or combination of processes, and the election of one remedy by the city or town shall not preclude enforcement through any other lawful means.

Violations of this bylaw 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 Establishment or Retail Establishment that violates any provision of this bylaw shall be subject to the following penalties:

268 First Offense: Written Warning

269 Second Offense: \$50 penalty

270 Third and each subsequent offense: \$300 penalty

271 Section 5. Regulations

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

274 Section 6. Interaction with Other Laws

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

278 Section 7. Severability

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

281 SECTION 4. To Prevent the Release of Helium Balloons into the Environment

282 Chapter 131 of the General Laws, as appearing in the 2016 official edition, is hereby  
283 amended by adding the following new section:

284 Section 119. The sale, distribution and release of any type of balloon, including, but not  
285 limited to, plastic or latex, filled with any type of lighter than air gas, both for public or private

286 use, is hereby prohibited. Whoever violates any provision of this section shall be punished by a  
287 fine of not more than one hundred dollars.

288 The provisions of this section shall not apply to (i) balloons released by or on behalf of  
289 any agency of the commonwealth or the United States for scientific or meteorological purposes,  
290 or (ii) hot air balloons that are recovered after launch.

291 SECTION 5. To Prevent the Release of Nips into the Environment

292 One year after passage of this Act, the sale of alcoholic beverages in containers less than  
293 or equal to 100 milliliters is prohibited within the Commonwealth of Massachusetts.

294 SECTION 6. To Prevent the Release of Wipes Containing Plastic into the Environment

295 Section 1. For purposes of this section, the following definition shall apply:

296 “Plastic Wipe”, a nonwoven disposable product manufactured and sold in this state or  
297 brought into the state for sale that is constructed from plastic resin (including, but not limited to,  
298 polyester and polypropylene) nonwoven sheets, including moist toilet tissue or cloth, that is  
299 designed, marketed to or commonly used by the general public for personal hygiene or cleaning  
300 purposes, including, but not limited to, diaper wipes, toilet wipes, household cleaning wipes,  
301 personal care wipes and facial wipes.

302 Section 2. No retailer shall sell or distribute plastic wet wipes other than those used for  
303 medical applications.

304 Section 3. This law shall not affect prescription products.

305 SECTION 7. To Prevent the Release of Hotel Toiletry Bottles into the Environment



Section 1. (a) For purposes of this section, the following definitions shall apply:

(1) “Hosted rental” means a house, apartment, or other livable space where the person providing sleeping accommodations is a permanent resident who lives on the premises.

(2) “Lodging establishment” means an establishment that contains one or more sleeping room accommodations that are rented or otherwise provided to the public, including, but not limited to, a hotel, motel, resort, bed and breakfast inn, or vacation rental. “Lodging establishment” does not include a hospital, nursing home, residential retirement community, prison, jail, homeless shelter, boarding school, worker housing, long-term rental, or hosted rental.

(3) “Personal care product” means a product intended to be applied to or used on the human body in the shower, bath, or any part thereof and shall include only shampoo, hair conditioner, and bath soap.

(4) “Plastic” means any synthetic material made from organic polymers, such as polyethylene, polyvinyl chloride (PVC), or nylon, that can be molded into shape while soft and then set into a rigid or slightly elastic form. “Plastic” includes all materials identified with resin codes 1 to 7, inclusive.

(5) “Small plastic bottle” means a plastic bottle or container with less than a 6-ounce capacity that is intended to be nonreusable by the end user.

(b) Commencing January 1, 2023, for lodging establishments with more than 50 rooms, and January 1, 2024, for lodging establishments with 50 rooms or less, a lodging establishment shall not provide a small plastic bottle containing a personal care product to a person staying in a

327 sleeping room accommodation, in any space within the sleeping room accommodation, or within  
328 bathrooms shared by the public or guests.

329 (c) A lodging establishment is encouraged to use bulk dispensers of personal care  
330 products to reduce plastic waste and lower operating costs, mindful of the health and safety of a  
331 person.

332 (d) A lodging establishment may provide personal care products in small plastic bottles to  
333 a person at no cost, upon request, at a place other than a sleeping room accommodation, a space  
334 within the sleeping room accommodation, or within bathrooms shared by the public or guests.

335 (e) A local agency with authority to inspect sleeping accommodations in a lodging  
336 establishment may issue a citation for a violation of subdivision (b). Upon a first violation, the  
337 local Board of Health shall issue a written warning, which shall recite the violation and advise  
338 that subsequent violations may result in citations. Upon a second or subsequent violation, the  
339 local agency may impose a penalty of five hundred dollars (\$500) for each day the lodging  
340 establishment is in violation, but not to exceed two thousand dollars (\$2,000) annually.

341 (f) A lodging establishment in violation of subdivision (b) is liable for a civil penalty of  
342 five hundred dollars (\$500) for the first violation and two thousand dollars (\$2,000) for a second  
343 or subsequent violation.

344 (g) (1) On and after January 1, 2022, a city, county, or city and county shall not pass or  
345 enforce an ordinance, resolution, regulation, or rule relating to personal care products in plastic  
346 bottles provided at lodging establishments, except as provided in paragraph (2).

Section 2. A city, county, or city and county that, before January 1, 2022, passed an ordinance, resolution, regulation, or rule relating to personal care products in plastic bottles provided at lodging establishments may enforce that ordinance, resolution, regulation, or rule, if it is at least as stringent as, and not in conflict with, this section.

#### SECTION 8. To Prevent the Release of Plastic Water Bottles Into the Environment

Section 1. (a) For purposes of this section, the following definitions shall apply:

"Single-serve plastic container" means a container with a volume of 1 liter or less made in whole or in part of plastic resin codes 1 through 6 (excluding the label or cap).

"Bottled Water" means non-sparkling, unflavored drinking water.

#### Section 2 - Restrictions

No retailer shall sell or distribute any bottled water in a single-serve plastic container other than nutritive drinks, tea, coffee, or unflavored carbonated water.

#### Section 3 - Exclusions

Sales or distribution of drinking water in plastic bottles occurring subsequent to a declaration by a duly authorized Town, state or Federal official of an emergency affecting the availability and/or quality of drinking water to residents of the Town shall be exempt from this bylaw until seven days after the declaration has ended.

#### SECTION 4 - Effective Date

The provisions of this law shall take effect one year after passage of this Act.

SECTION 9. To Prevent the Release of Black Plastic into the Environment

The General Laws are hereby amended by inserting after chapter 21R the following chapter:

Chapter 21S.

Section 1. Definitions. As used in this chapter, 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 bylaw.

“Health Agent” shall mean the Health Agent for the city or town of the facility 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 2. Regulated Conduct

a. One year after passage of this Act, no Food Establishment in the Commonwealth of Massachusetts may use, sell, offer for sale, or otherwise distribute disposable food service ware made from black plastic.

b. One year after passage of this Act, no Retail Establishment in the Commonwealth of Massachusetts 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 3. Exemption

a) Nothing in this chapter shall prohibit individuals from using disposable food service ware or other items made of black plastic purchased outside the Commonwealth of Massachusetts for personal use. b) Prepared food packaged outside the Commonwealth of Massachusetts 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 Commonwealth of Massachusetts Department of Environmental Protection or the Board of Health of the city or town in which the food or retail establishment is located may exempt a food establishment or retail establishment from any provision of this chapter 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 Department of Environmental Protection or 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 chapter. For purposes of this chapter,

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

#### 433 Section 4. Enforcement

434 Health Agents of the cities and towns of the Commonwealth of Massachusetts shall also  
435 have the authority to enforce this chapter. This chapter may be enforced through any lawful  
436 means in law or in equity, including but not limited to, noncriminal disposition pursuant to G.L.  
437 c. 40 § 21D and Article VI of the General Bylaws. The town or city may enforce this chapter or  
438 enjoin violations thereof through any lawful process or combination of processes, and the  
439 election of one remedy by the town or city shall not preclude enforcement through any other  
440 lawful means.

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

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

445 First Offense: written warning

446 Second Offense: \$50 penalty

447 Third and each subsequent offense: \$300 penalty

#### 448 Section 5. Regulations

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

451           Section 6. Interaction with Other Laws

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

455           Section 7. Severability

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

458           SECTION 10. To Support Our Restaurants

459           Section 1. For purposes of this chapter, the following terms have the following  
460 definitions:

461           (a) “Disposable”, means designed to be discarded after a single or limited number of uses  
462 and not designed or manufactured for long-term multiple reuse.

463           (b) “Food service ware accessories”, include food service ware such as straws, stirrers,  
464 cup spill plugs, cup sleeves, condiments and condiment packets, utensils (including chopsticks),  
465 cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying food  
466 service ware used as part of food or beverage service or packaging. Detachable lids for beverage  
467 cups and food containers are not considered a food service ware accessory.



(c) “Food facility”, means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption.

(d) “Takeout food”, means prepared food requiring no further preparation, which is purchased to be consumed off a prepared food facility’s premises. Takeout food includes prepared food delivered by a food facility or by a third-party takeout food delivery service.

(e) “Takeout food delivery service”, is a service that delivers takeout food from a food facility to a customer for consumption off the premises. This service can be provided directly by the food facility or by a third party.

## Section 2.

(a) No food facility shall provide any disposable food service ware accessories except:

1. Upon request by the consumer;
2. Upon acceptance by the consumer after being offered by the food facility; or
3. At a self-serve area and/or a dispenser.

(b) Food facilities shall only distribute disposable food service ware if they charge the customer what that food ware cost the food facility, or a dollar, whichever is greater.

(c) Takeout food delivery services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smartphones, shall only offer disposable food service ware accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no disposable food service ware accessories are requested. Each

488 individual disposable food service ware accessory (e.g., each fork, knife, condiment packet,  
489 napkin, etc.) provided with prepared food must be specifically requested by the customer in order  
490 for a food facility to provide it.

491 (d) Takeout food delivery services shall only distribute disposable food service ware if  
492 they charge the customer what that food ware cost the food facility, or a dollar, whichever is  
493 greater.

494 SECTION 11. The provisions of this bill shall take effect one year after passage unless  
495 otherwise specified.