

# *Commonwealth of Massachusetts*

**BERKSHIRE, SS.**

**To One of the Constables of the Town of Lenox:**

## **GREETING:**

**In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Lenox qualified to vote in town affairs, to meet in the**

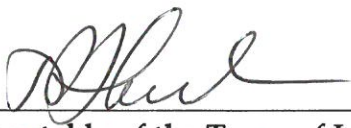
**Lenox Memorial Middle High School in said Lenox, on Thursday,  
May 7, 2015  
at 7:00 o'clock p.m., then and there to act upon the following:**

- ARTICLE 1.** To authorize the Selectmen to choose all Minor Town Officers to wit: Field Drivers, Pound Keepers, Fence Viewers, Surveyors of Lumber, Wood and Bark, Sextons and Sealer of Weights and Measures.
- ARTICLE 2.** To see whether the Town will authorize the Treasurer to enter into a compensating balance agreement or agreements for Fiscal Year 2016 pursuant to Chapter 44, Section 53F of the General Laws; or take any other action in relation thereto.
- ARTICLE 3.** To see if the Town will vote to appropriate a sum not to exceed \$95,000 for snow and ice removal costs, said sum to be transferred from available funds and added to the amount appropriated to the Snow and Ice line item under Article 3 of the Warrant for the 2014 Annual Town Meeting; or take any action in relation thereto.

**APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE**

CONSTABLE'S RETURN

In pursuance of the within warrant, I have on the 27th day of  
April, 2015 notified and warned the Inhabitants  
of the Town of LENOX, qualified to vote in elections and in town  
affairs to meet at the time and place and for the purposes mentioned  
in said warrant by posting three attested copies of said warrant at  
the Post Office in LENOX, an attested copy of said warrant at the  
Town Hall in LENOX, an attested copy of said warrant at the Post  
Office in LENOX DALE.

  
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Constable of the Town of Lenox

**ARTICLE 4.**

To see if the Town will vote to raise and appropriate or transfer from available funds in the treasury, money for the operating expenses of the Town for Fiscal Year 2016 as follows, or any other sum; or take any other action in relation thereto.

DEPARTMENT ACCOUNT	FY 15	FY 16
	<u>JULY 1, 2014 - JUNE 30, 2015</u>	<u>JULY 1, 2015 - JUNE 30, 2016</u>
1. Admin. & Finance	286,836	251,815
2. Town Treasurer/Clerk	128,556	131,850
3. Town Collector	117,514	99,093
4. Compensation Reserve	0	120,000
5. Operations Support	85,850	85,900
6. Elections & Registration	8,369	8,368
7. Economic Development	10,000	65,000
8. Town Debt & Interest	1,285,612	910,759
9. Audit, Reserve Account	107,600	539,618
10. Insurance & Bonds, OPEB	737,800	910,934
11. Land Use Department	276,049	299,207
12. Town Buildings	164,620	114,709
<b>General Government Subtotal</b>	<b>3,208,806</b>	<b>3,537,253</b>
13. Police Department	1,207,099	1,059,248
14. Fire Department	352,490	400,107
15. Emergency Management	26,800	27,619
<b>Public Safety Subtotal</b>	<b>1,586,389</b>	<b>1,486,974</b>
16. Lenox Public Schools	11,417,503	*11,815,093
17. Vocational Education	77,000	79,310
<b>Education Subtotal</b>	<b>11,494,503</b>	<b>11,894,403</b>
18. Highway Department	603,722	566,344
19. Snow & Ice	257,005	257,005
20. Other Storm Emergencies	0	7,000
21. Cemetery	93,244	77,071
<b>Public Works Subtotal</b>	<b>953,971</b>	<b>907,420</b>
22. Board of Health	113,205	121,506
23. Veterans Services	70,134	70,113
<b>Human Services Subtotal</b>	<b>183,339</b>	<b>191,619</b>
24. Community Center	313,351	310,342
25. Academy Building	8,575	7,824
26. Historical Commission	600	10,950
27. Celebrations	2,200	2,200
28. Historic District Commission	3,350	100
<b>Cultural &amp; Recreation Subtotal</b>	<b>328,076</b>	<b>331,416</b>
<b>Totals</b>	<b>\$17,755,084</b>	<b>\$18,349,085</b>

ALL LINE ITEMS APPROVED BY BOARD OF SELECTMEN

LINE ITEMS 1-15 AND 17-28 APPROVED BY FINANCE COMMITTEE

\*LINE #16 APPROVED BY SCHOOL COMMITTEE; NOT APPROVED BY FINANCE COMMITTEE

ARTICLE 5.

To see if the Town will vote to make the following appropriations, or any other sum, to the Fiscal Year 2016 budget for the Water Department; or take any other action in relation thereto.

1. Water Operations	\$601,450
2. Debt Service	\$560,485
3. Capital Expenditures	<u>\$535,000</u>
	\$1,696,935

And further, to provide for said appropriations from the following sources of revenue and available funds:

User Charges	\$1,397,486
Retained Earnings	<u>\$299,449</u>
TOTAL	\$1,696,935

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 6.

To see if the Town will vote to make the following appropriations, or any other sum, to the Fiscal Year 2016 budget for the Sewer Department; or take any other action in relation thereto.

1. Sewer Operations	\$787,718
2. Debt Service	\$589,406
3. Capital Expenditures	<u>\$ 70,000</u>
	\$1,447,124

And further, to provide for said appropriations from the following sources of revenue and available funds:

User Charges	\$1,423,937
Retained Earnings	<u>\$ 23,187</u>
TOTAL	\$1,447,124

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC



ARTICLE 7.

To see if the Town will vote to make the following appropriations, or any other sum, to the Fiscal Year 2016 budget for the Ambulance Squad; or take any other action in relation thereto.

Ambulance Operations	\$408,083
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And further, to provide for said appropriations from the following sources of revenue and available funds:

User Charges	\$314,025
Retained Earnings	<u>\$ 94,058</u>
TOTAL	\$408,083

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 8.

To see if the Town will vote to raise and appropriate the sum of \$258,383, or any other sum, for library services to be provided by the Lenox Library Association in Fiscal Year 2016; or take any other action in relation thereto.

ARTICLE 9.

To see if the Town will vote to raise and appropriate or otherwise provide, the sum of \$1,827,738, or any other sum, for the following capital expenditures:

1. Highway Department Expenditures	\$1,157,000
2. School Department Expenditures	\$ 364,200
3. Fire Department Expenditures	\$ 41,600
4. Police Department Expenditures	\$ 15,000
5. Town Buildings/Equipment Expenditures	\$ 20,000
6. Academy Building Expenditures	\$ 58,400
7. Community Center Expenditures	\$ 163,470
8. Tri-Town Health Expenditures	\$ 8,068

And further, to provide for said appropriations, to raise and appropriate the sum of \$687,738 and to transfer from Free Cash as certified on July 1, 2014, the sum of \$1,140,000; or take any other action in relation thereto.

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 10. To see if the Town will vote to raise and appropriate or otherwise provide, the sum of \$650,000, or any other sum, to the Board of Selectmen for the purchase of fire apparatus and related equipment.

And further, to provide for said appropriation, to raise and appropriate the sum of \$200,000 and transfer from the Fire Engine Stabilization Fund the sum of \$450,000; or take any other action in relation thereto. [2/3 vote required]

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 11. To see if the Town will vote to accept funds being provided by the Commonwealth of Massachusetts under the provisions of Chapter 90 of the General Laws, to pay for such costs as allowed by appropriate legislation in connection with the maintenance, repair, and construction of Town ways and bridges; or take any other action in relation thereto.

ARTICLE 12. To see if the Town will vote to appropriate or reserve from the Community Preservation Fund annual revenues in the amounts recommended by the Community Preservation Committee for project debt service in fiscal year 2016, with each item to be considered a separate appropriation; or take any other action in relation thereto.

Library Debt Service	\$134,765	(General Unreserved)
Sawmill Brook Debt Service	\$124,200	(Community Housing Reserve)

SPONSORED BY COMMUNITY  
PRESERVATION COMMITTEE

ARTICLE 13. To see if the Town will vote to appropriate or reserve from the Community Preservation annual revenues in the amounts recommended by the Community Preservation Committee for committee administrative expenses, community preservation projects and other expenses in fiscal year 2016, with each item to be considered a separate appropriation; or take any other action in relation thereto.

**Appropriations:**

FY 2016 estimated revenues for Administrative Expense

\$ 18,750

**Reserves:**

FY 2016 estimated revenues for Historic Resources Reserve	\$ 37,500
FY 2016 estimated revenues for Community Housing Reserve	\$ 37,500
FY 2016 estimated revenues for Open Space Reserve	\$ 37,500
FY 2016 estimated revenues for General Unreserved	<u>\$243,750</u>
Total	\$375,000

Estimated new surcharge collections for FY 2016	\$300,000
Estimated State Match for FY 2016	<u>\$75,000</u>
Total	\$375,000

**SPONSORED BY COMMUNITY  
PRESERVATION COMMITTEE**

**ARTICLE 14.** To see if the Town will vote to appropriate or reserve from the Community Preservation Fund annual revenues in the amounts recommended by the Community Preservation Committee for committee administrative expenses and community preservation projects and other expenses in fiscal year 2016, with each item to be considered a separate appropriation; or take any other action in relation thereto.

Old Court House Cupola	\$27,750 (Historic Preservation)
Ventfort Hall Master Plan	\$23,490 (General Unreserved)
St. Martin's Hall Restoration, Phase 1	\$20,000 (General Unreserved)
Library Step Repair	\$20,000 (Historic Preservation)
Kennedy Park Improvements	\$9,965 (Recreation)
Historical Commission--Church on the Hill Cemetery	\$25,000 (Historic Preservation)
Open Space Reserve	\$100,000 (General Unreserved)

**SPONSORED BY COMMUNITY  
PRESERVATION COMMITTEE**

**ARTICLE 15.** To see if the Town will vote to authorize revolving fund accounts pursuant to Chapter 44, Section 53E½ of the General Laws; or take any other action in relation thereto.

**APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE**

ARTICLE 16. To see if the Town will appropriate a sum of money to pay costs of designing a sewage pump station to be located on Henry Avenue, including the payment of all costs incidental and related thereto; to determine whether this amount should be raised by borrowing or otherwise; or take any other action in relation thereto. [2/3 vote required]

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 17. To see if the Town will appropriate a sum of money to pay costs of replacing the Yokun Avenue sewer line, including the payment of all costs incidental and related thereto; to determine whether this amount should be raised by borrowing or otherwise; or take any other action in relation thereto. [2/3 vote required]

APPROVED BY BOARD OF SELECTMEN  
APPROVED BY FINANCE COMMITTEE  
APPROVED BY CIC

ARTICLE 18. To see if the Town will vote to authorize the Board of Selectmen to enter into an agreement or agreements for parking easements or leases with any or all of the owners of property on Ore Bed Road between Tucker Street and Housatonic Street or their successors, heirs or assigns for parking of vehicles, on such terms and conditions as the Board determines to be in the best interest of the Town; or take any other action in relation thereto.

ARTICLE 19. To see if the Town will vote to modify existing language in the Lenox Historic District Commission Bylaw to simplify the appointment process and maintain explicit conformity with M.G.L. Chapter 40C by inserting "When possible" at the beginning of Section 3.1a.; or take any other action in relation thereto.

SPONSORED BY HISTORIC DISTRICT  
COMMISSION

ARTICLE 20. To see if the Town will vote to amend the Lenox Zoning By-laws by adding a new section entitled Section 11. Large-Scale Ground-Mounted Solar Photovoltaic Installations, a copy of which is on file with the Town Clerk and available for public inspection; or take any other action in relation thereto. [2/3 vote required]



ARTICLE 21. To see if the Town will vote to amend the Lenox Zoning By-laws by adding a new section under Section 5 General Regulations, Section 5.1 Off-street Parking and Loading Requirements, entitled Village Center Parking Overlay District, 5.1.20 Parking and Loading in Downtown Lenox, a copy of which is on file with the Town Clerk and available for public inspection; or take any other action in relation thereto. [2/3 vote required]

ARTICLE 22. To see if the Town will vote to grant an easement to Massachusetts Electric Company for overhead and underground systems which are located in, through, under, over, across and upon a certain parcel of land situated on the northwesterly side of Pumping Station Road, being more particularly described in a deed dated January 18, 1878 recorded with the Middle Berkshire District Registry of Deeds in Book 237, Page 211, a copy of which is on file with the Town Clerk and available for public inspection; or take any other action in relation thereto.

ARTICLE 23. To see if the Town will vote to authorize the Town Manager to negotiate terms and execute, on such terms and conditions as the Town Manager and Board of Selectman deem in the best interest of the Town, one or more renewable energy purchase and/or net metering power purchase agreements for a term of more than three years, for the purchase of net metering credits to be generated from one or more solar energy project(s) now or hereafter located in the Commonwealth of Massachusetts, and to take all actions necessary to implement and administer such agreement; or take any other action in relation thereto.

ARTICLE 24. To see if the town will enact the following proposed bylaw, printed entirely below

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**TITLE: A green bylaw eliminating the use of single-use plastic bags in retail sales, and requiring the use of reusable bags and/or recyclable paper bags as checkout bags to customers for retail sales, and further requiring that all food and beverage grocery bags shall use only reusable bags, while allowing plastic bags to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale.**

**SECTION 1, PURPOSE:**

This bylaw is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the Town of Lenox.

## **SECTION 2, EFFECTIVE DATE:**

This bylaw shall take effect on January 1, 2016.

## **SECTION 3, FINDINGS:**

Globally, the production and use of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil. Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, many of which end up as litter each year. These bags last hundreds of years in landfills and are a potential source of harmful chemicals when they do break down.

Most plastic carry-out bags do not biodegrade, but instead photo-degrade, which means that the bags break down into smaller and smaller toxic bits that enter the food web when animals mistake those materials for food.

Plastic bags are costly, environmentally damaging, and easily preventable sources of litter and pollution. Light and aerodynamic, plastic bags can become airborne even when properly disposed of; bags photodegrade and disintegrate into particles, littering our urban landscape and posing a serious threat to the riparian and marine environments and wildlife. Even when they are no longer obvious to the naked eye, plastic degrades into tiny particles that adsorb toxins and contaminate our food chain as well as water and soil.

Polyethylene plastic bags represent an unnecessary use of a nonrenewable resource. Reusable carryout bags represent the sustainable alternative to single use bags of all types.

Alternatives to plastic bags are readily available and include reusable cloth bags and recyclable paper bags. Retail establishments could do more to better the environment by encourage customers to use reusable bags, making single-use plastic unnecessary.

Plastic shopping bags create significant litter problems in our town's neighborhoods and also its streets, parks, creeks and open space lands.

Non-biodegradable plastic bags often are discarded into the environment and end up polluting our waterways, clogging sewers, endangering marine life and causing unsightly litter.

Reusable carryout bags are considered worldwide to be the best option to reduce waste and litter, protect wildlife, and conserve resources. Reusable bags have lower associated greenhouse gas emissions than single use bags and are readily available and affordable for the consumer.

We recognize a duty to protect the natural environment, the economy, and the health of our citizens.

It is the intent to reduce the negative impacts of polyethylene plastic carryout bags and encourage the use of reusable carryout bags through the implementation of this bylaw.

As far as environmental degradation and preservation of natural resources is concerned, a bag designed for multiple uses is preferable over a recyclable, single use paper bag. We are cutting down trees at an alarming rate, and there is still an environmental impact of recyclable paper bags. We as a town encourage the use of reusable bags in all retail sales as being the most eco-friendly, even over recyclable paper bags.

We find that a recyclable paper bag that contains no old growth fiber and is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content is more environmentally friendly than a plastic grocery bag.

We also recognize that food and beverage grocery bags of food and beverages are highly susceptible to the use of reusable bags without great inconvenience or cost to merchant or customer.

However, for retail sales not involving the sale of food or beverages prepared on the premises, the town will also accept check out bags that are made of recyclable paper, as long as the bags are sold for 25 cents. Since all customers can opt to use reusable bags, their own handbags or knapsacks, hand-carry, or use manufacturer's boxes at retail establishments which is preferable to single use recyclable paper bags, the 25 cent surcharge will incentive the use of these alternatives, while still using single-use recyclable paper bags.

Most of the people that live in the town travel by motor vehicle. It is anticipated, over the course of time, residents will develop the habit of keeping reusable checkout bags in their motor vehicle for purchases. Those using other means of transportation to get to retail establishments over the course of time will develop the habit of bringing recyclable bags. Many tourists might already have recyclable bags in their motor vehicles. Many non-residents who purchase reusable bags may be encouraged to use reusable bags in their home communities.

Single-use plastic bags have been banned in communities throughout the United States.

#### **SECTION 4, DEFINITIONS:**

**"CHECKOUT BAG"** means a carryout bag that is provided to a customer at the point of sale. A bag without handles intended by the manufacturer to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale shall not be a "checkout bag." The Board of Health shall have final say as to what is or is not a "checkout bag."

**"FOOD AND BEVERAGE GROCERY CHECKOUT BAG"** means a type of checkout bag that carries (in whole or part) food or beverages, wherein the food or beverage was not substantially prepared on premises, wherein further the food



or beverage is to be consumed off premises. A bag without handles intended by the manufacturer to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale shall not be a “food and beverage grocery bag.” A checkout bag is not a “food and beverage grocery bag” if the checkout bag does not contain (in whole or part) food or beverages, wherein the food or beverage was not substantially prepared on premises, wherein further the food or beverage is to be consumed off premises

The Board of Health shall have final say as to what is or is not a “food and beverage grocery bag.”

**“RETAIL ESTABLISHMENT”** means any commercial establishment that sells perishable or nonperishable goods for use off premises including, but not limited to, clothing, food, and personal items which are to be directly used by the customer. The Board of Health shall have final say as to what is or is not a “retail establishment.”

**“RETAIL SALES”** means the transfer to a customer of goods in exchange for payment occurring in a retail establishment. The term “retail sales” does not include sales of goods at yard sales, tag sales, other sales by residents at their home, and sales by not-for-profit organizations. The Board of Health shall have final say as to what is or is not “retail sales.”

**“RECYCLABLE PAPER BAG”** means a paper bag that should have the following characteristics:

- (1) contains no old growth fiber; and
- (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and
- (3) displays the words “Reusable” and “Recyclable” on the outside of the bag.

The Board of Health shall have final say as to what is or is not a “recyclable paper bag.”

**“REUSABLE BAG”** means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

1. has a minimum lifetime of 125 uses, which for purposes of this bylaw means the capability of carrying a minimum of 22 pounds, 125 times over a distance of at least 175 feet; and
2. has a minimum volume of 15 liters; and
3. is machine washable or is made of a material that can be cleaned or disinfected; and
4. if made of plastic, is a minimum of at least 2.25 mils thickness.

The Board of Health shall have final say as to what is or is not a “reusable bag.”

**“MANUFACTURER’S CARDBOARD BOX”** means a cardboard box in which goods were shipped, where the box was designed primarily for shipment by the manufacturer of the cardboard box for multiple sales units of the good. The Board of Health shall have final say as to what is or is not a “manufacturer’s cardboard box.”

#### **SECTION 5, PROHIBITION:**

- A. RETAIL SALES, NON-GROCERIES:** Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers. Checkout bags that are recyclable paper bags shall be sold for a cost of 25 cents and shall not be distributed free of charge.
- B. RETAIL SALES, GROCERIES:** Any person engaged in retail sales wherein the checkout bags are food and beverage grocery bags, shall only use checkout bags that are reusable bags. Checkout bags that are food and beverage grocery bags shall not be a recyclable paper bag unless the recyclable paper bag also qualifies as a reusable bag.
- C. SELLING REUSABLE BAGS NOT PROHIBITED:** Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.
- D. USE OF MANUFACTURER’S CARDBOARD BOX TO CARRY ITEMS OUT NOT PROHIBITED:** Nothing in this section shall preclude persons engaged in retail sales from reusing a manufacturer’s cardboard box or otherwise making the manufacturer’s cardboard box available to the customer for use in carrying out goods.

#### **SECTION 6, DEFERMENTS:**

- A.** Upon written application, the Board of Health, after a public hearing, may defer application of this bylaw for a retail establishment for a one year period, upon a showing by the retail establishment that the conditions of this bylaw would cause undue hardship.

For purposes of this bylaw, an “undue hardship” is a situation unique to the retail establishment where there are no reasonable alternatives to the use of reusable bags and/or recyclable paper bags as checkout bags for retail sales not involving food or beverages not prepared on premise, and compliance with this bylaw would cause significant economic hardship to that retail establishment. For purposes of this bylaw, an “undue hardship” is also a situation unique to the retail establishment where there are no reasonable alternatives to the use of reusable bags as food and beverage grocery checkout bags, and compliance with this bylaw would cause significant economic hardship to that retail establishment.



- B. A retail establishment granted a deferment by the Town must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.
- C. A deferment granted in accordance with this Section may be extended for no more than one additional one year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.
- D. A deferment application shall include all information necessary for the Town to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.
- E. The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the public health and further the interests of this bylaw.
- F. Deferment decisions are effective immediately and final.

#### **SECTION 7, ENFORCEMENT:**

- A. The Board of Health or its designee shall inquire on an annual basis regarding any retail establishment's compliance with this bylaw.
- B. The Board of Health, after ten (10) separate violations of this bylaw by the retail establishment on ten (10) different days within any 360 day period, after a public hearing with due process rights of participation afforded to the retail establishment so that they may present evidence, may order that the retail establishment to remain closed for any period deemed necessary up to six months to obtain compliance with this bylaw. Only the Board of Health itself shall have the power to conduct public hearings on whether to close a retail establishment, and this power shall not be delegated to anyone else, including but not limited designees of the Board of Health or the Police Department and its designees. The rulings of the Board of Health concerning closings retail establishments for violation of this bylaw shall be final.
- C. The Board of Health or its designee and the Police Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Board of Health or its designee and the Police Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance in accordance with applicable law.

- D. The Board of Health and the Police Department or its designee may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health or the Police Department shall not preclude enforcement through any other lawful means.
- E. Any member of the public who observes a potential violation of this bylaw shall be able to file a complaint with the Board of Health or its designee shall investigate whether there is a violation of this bylaw. When deemed necessary by the Board of Health or its designee, the Police Department shall assist in the investigation and shall assist in identifying violators. A member of the public shall also be able to file a complaint with the Police Department if they believe there has been a violation of this bylaw, and the Police Department or its designee shall investigate.
- F. Penalties and Fines for Violations of this bylaw may be enforced as follows:
- G. This bylaw shall be enforced by the Board of Health or its designee, or the Chief of Police or his/her designee, save that deferment applications or retail establishment closings public hearings shall only be heard by the Board of Health and not the Police Department, and the Board of Health shall not delegate its authority to conduct public hearings regarding deferments or closing retail establishments. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to the following penalties:
1. For the first violation, the Board of Health or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the retail establishment which will specify the violation and the appropriate penalties in the event of future violations. The warning should also state that the retail establishment may be closed if it fails to comply. Thereafter, the following penalties shall apply:
    - (a). A fine of one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.
    - (b). A fine of two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.
  2. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. In no event shall there be more than one



violation per day assessed against a retail establishment.d

3. Whoever violates any provision of this bylaw may also be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars. (Petition Article)

ARTICLE 25. To see if the **Town of Lenox** will enact the following proposed bylaw, printed entirely below, entitled:

**“A BAN OF EXPANDED POLYSTYRENE FOAM IN FOOD ESTABLISHMENTS AND TOWN FACILITIES”**

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**BAN OF EXPANDED POLYSTYRENE FOAM IN FOOD ESTABLISHMENTS AND TOWN FACILITIES**

**SECTION 1, PURPOSE:**

This bylaw is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the town.

**SECTION 2, EFFECTIVE DATE:**

This bylaw shall take effect on January 1, 2016.

**SECTION 3, FINDINGS:**

Expanded polystyrene food containers form a significant portion of the solid waste stream going into our landfills. Local landfills are running out of room. In neighboring communities that use landfills, future solid waste may have to be transported hundreds of miles to a landfill at considerable cost. While polystyrene is light-weight, it is extremely voluminous in landfills. In a landfill environment, ten pounds (the weight of five reams of 8.5"x11" computer paper) of foam takes the space equivalent to a household refrigerator.

Polystyrene cannot be effectively recycled, and the vast majority of it is not. There are very few polystyrene recycle facilities in the United States. Often, long distance travel is required. The nearest facility to Berkshire County in Massachusetts is in Leominster. There is little market for the recycled product. Food residue is considered a contaminant, so either it is not used or must be washed with solvents.

Expanded polystyrene is not biodegradable. Once buried in our landfills, it will persist for centuries. Polystyrene never breaks down. Polystyrene products are not only an eyesore when left in the environment, they are highly toxic to humans and animals. Polystyrene is harmful to animal and marine life because

when polystyrene breaks down into smaller chips, animals such as birds and fish may mistake it for food and ingest it and it is toxic.

Nor is polystyrene safe when incinerated. With the addition of chlorine donors as simple as table salt, it is inevitable that combustion of polystyrene in municipal solid waste incinerators will contribute to the formation of highly chlorinated polycyclic compounds like dioxins, furans, hexachlorobenzene, and chlorophenols. It is this family of compounds that are some of the most biologically active toxins known to humans.

Styrene, the key ingredient in expanded polystyrene, was recently added to the National Toxicology Program's list of carcinogens (U.S. Department of Health and Human Services). Styrene can leach from polystyrene containers into food and beverages.

The National Toxicology Program, a division of the Department of Health and Human Services, in 2011 added styrene to its "reasonably anticipated to be a carcinogen" list. The abstract of the study reads, "Styrene is *reasonably anticipated to be a human carcinogen* based on limited evidence of carcinogenicity from studies in humans, sufficient evidence of carcinogenicity from studies in experimental animals, and supporting data on mechanisms of carcinogenesis."

Styrene migrates from the containers into food and beverages when heated or in contact with fatty or acidic foods. In fact, the studies of the deleterious effect of polystyrene on health and the environment are voluminous.

The environmental disadvantages of polystyrene vastly outweigh whatever imagined environmental benefits there is of polystyrene.

Many communities in the United States have banned expanded polystyrene food containers, including Seattle WA, Freeport ME, New York NY, Amherst MA, Brookline MA, Great Barrington MA and Nantucket MA.

Appropriate alternative products are readily available from the vendors used by local food establishments; cooperative bulk buying arrangements are possible. The environmental cost of polystyrene is not absorbed by the vendor or passed on to the consumer, thereby creating market inefficiencies because the cost of environmental impact is not reflected in the cost of the product. Polystyrene may appear cheaper to vendor or consumer, but that is because they are not paying a fee for environmental impact of their food and beverage container choice.

Thus, elimination of expanded polystyrene food containers is in the best interest of the health and welfare of Town inhabitants.

It is also a finding that a disposable food or beverage container should be either biodegradable or recyclable.



#### **SECTION 4, DEFINITIONS:**

**“Disposable Food Service Container”** means single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single use disposable utensils, nor does it include single-use disposable packaging for unprepared foods. The Board of Health shall have final say as to what is or is not a “Disposable Food Service Container.”

**“Food Establishment”** means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a “Food Establishment” for purposes of this bylaw. The Board of Health shall have final say as to what is or is not a “Food Establishment.”

**“Expanded Polystyrene” (EPS)** means polystyrene that has been expanded or “blown” using a gaseous blowing agent into a solid foam. The Board of Health shall have final say as to what is or is not a food service container is made of “Expanded Polystyrene.”

**“Polystyrene”** means expanded polystyrene which is a thermoplastic petrochemical material 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 “polystyrene” also includes clear or solid polystyrene which is known as “oriented polystyrene”. The Board of Health shall have final say as to what is or is not a food service container made of “Polystyrene.”

**“Prepared Food”** means any food or beverage prepared for consumption on the Food Establishment’s premises, using any cooking or food preparation technique. This does not include any raw uncooked meat, fish or eggs unless provided for consumption without further food preparation. The Board of Health shall have final say as to what is or is not a “prepared food.”

**“Town Facility”** means any building, structure, land or park owned or operated by the Town, its agents and departments. The Board of Health shall have final say as to what is or is not a “Town Facility.”

**“Town Facility Users”** means all persons, societies, associations, organizations or special event promoters who require permission to use a Town Facility. Town Facility Users also includes concession contracts with the Town, Town-managed concessions, Town-sponsored events and food services provided at the Town’s expense. The Board of Health shall have final say as to what is or is not a “Town Facility User.”



**“Biodegradable Food Service Container”** means having the ability to completely break down, or decompose back into the natural environment without causing harm to the environment within three years. The Board of Health shall provide a list of acceptable vendors to assist the public as to what is or is not a “biodegradable” food container and make it available on the Town’s website and at the Board of Health; but any product that completely breaks down, or decomposes back into the natural environment without causing harm to the environment within three years shall be “biodegradable” whether it is or is not on the list provided by the Board of Health. The Board of Health shall establish procedures for a vendor to be added to the acceptable “biodegradable” food container vendor list, and shall establish standards to periodically review and revise the list. In no event shall a product composed in whole or in part of polystyrene be deemed “biodegradable.” The Board of Health shall have final say in whether a given food container is or is not “biodegradable,” and shall establish standards for implementation.

**“Recyclable Food Service Container”** means a food service container completely capable of reuse as a food service container fifty or more times and designed by the manufacturer for multiple reuse, OR completely capable of being used as a high quality of recycle, wherein the materials of the food service container may be completely reclaimed and used in new food service containers at least ten times. The Board of Health shall have final say in whether a given food container is or is not “recyclable,” and shall establish standards for implementation. The Board of Health shall provide a list of acceptable vendors to assist the public as to what is or is not a “recyclable food container” and make it available on the Town of Town’s website and at the Board of Health, but any product wherein the materials of the food service container may be completely reclaimed and used in new food service containers at least ten times shall be considered “recyclable.” The Board of Health shall establish procedures for a vendor to be added to the acceptable “recyclable” food container vendor list, and shall establish standards to periodically review and revise the list. In no event shall a product composed in whole or in part of polystyrene be deemed “recyclable.”

## **SECTION 5, PROHIBITION:**

A. Except as provided herein, Food Establishments are prohibited from dispensing Prepared Food to customers in a Disposable Food Service container made from Expanded Polystyrene. Food Establishments are also prohibited from dispensing Prepared Food to customers in a Disposable Food Service container that is not a Biodegradable Food Service Container or a Recyclable Food Service Container.

B. Town Facility Users are prohibited from dispensing Prepared Food to customers in a Disposable Food Service container made from Expanded Polystyrene. Town Facility Users are also prohibited from dispensing Prepared Food to customers in a container that is not a Biodegradable Food Service Containers or a Recyclable Food Service Containers.

## **SECTION 6, DEFERMENTS:**

A. Upon written application, the Board of Health, after a public hearing, may defer application of this Bylaw for a Food Establishment for a one year period, upon a showing by the Food Establishment that the conditions of this Bylaw would cause undue hardship. For purposes of this Bylaw, an "undue hardship" is a situation unique to the Food Establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that Food Establishment. The Board of Health shall not delegate its duty to hear deferral applications and the Police Department shall not hear deferral applications.

B. A Food Establishment granted a deferment by the Town must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.

C. A deferment granted in accordance with this Section may be extended for no more than one additional one year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

D. A deferment application shall include all information necessary for the Town to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.

E. The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the public health and further the interests of this Bylaw.

F. Deferment decisions are effective immediately and final.

## **SECTION 7, ENFORCEMENT:**

A. The Board of Health or its designee shall inquire on an annual basis regarding any food establishment's compliance with this bylaw as a condition for renewal of the establishment's food service permit.

B. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this bylaw. Neither a designee of the Board of Health, nor the Police Department or its designee shall conduct such hearings to suspend or revoke the food service permit: such hearings to suspend or revoke the food service permit shall be conducted only by the Board of Health itself without delegation and their ruling shall be final.

C. The Board of Health or its designee and the Police Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Board of Health or its designee and the Police Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

D. The Board of Health and the Police Department or its designee may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health or the Police Department shall not preclude enforcement through any other lawful means.

E. Any member of the public who observes a potential violation of this bylaw shall be able to file a complaint with the Board of Health or its designee shall investigate whether there is a violation of this bylaw. When deemed necessary by the Board of Health or its designee, the Police Department shall assist in the investigation and shall assist in identifying violators. A member of the public shall also be able to file a complaint with the Police Department if they believe there has been a violation of this bylaw, and the Police Department or its designee shall investigate.

F. Penalties and Fines for Violations of this bylaw may be enforced as follows:

This bylaw shall be enforced by the Board of Health or its designee, or the Chief of Police or his/her designee, save that deferment applications or public hearings regarding revocation of a food service permit may only be heard by the Board of Health. Whoever violates any provision of this bylaw may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition bylaw. If non-criminal disposition is elected, then any person who violates any provision of this bylaw shall be subject to the following penalties:

1. For the first violation, the Board of Health or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the food establishment which will specify the violation and the appropriate penalties in the event of future violations. Thereafter, the following penalties shall apply:

- (a). A fine of one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.

- (b). A fine of two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.



2. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. In no event shall there be more than one violation per day assessed against a food establishment or a town facility user.

3. Whoever violates any provision of this bylaw may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars. (Petition Article)

**NOTE:** All votes are by a simple majority rule unless otherwise noted.

You are also directed to notify and warn the inhabitants of the Town of Lenox qualified to vote on Town affairs to meet in the Town Hall in said Lenox on Monday, May 11, 2015 at 7:00 A.M. to bring their votes for the following Town Officers:

- 1 Moderator for one year
- 2 Selectmen for three years
- 1 Board of Health Member for three years
- 1 Assessor for three years
- 3 School Committee Members for three years
- 1 School Committee Member for two years
- 1 Planning Board Member for five years
- 1 Housing Authority Member for five years

The polls will be open from 7:00 A.M., and may be closed by 7:00 P.M.

**And you are directed to serve this warrant by posting an attested copy of the warrant therefore in three public places in the Town not less than seven days before the meeting.**


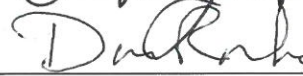
**Hereof fail not and make due return of this warrant with your doings thereon to the Town Clerk or the Selectmen, at the time and place of said meeting.**

**Given under our hand the 15th day of April in the year of Our Lord Two Thousand and Fifteen.**

A true copy, ATTEST:

  
Constable of Lenox.

Signed

Edward Lane



Warren E. Archey  
Selectmen of Lenox

