

Single-Use Plastics Rules and Regulations for Food Establishments

Adopted Date: April 28, 2025

Effective Date: September 1, 2025

Preamble

Food Establishments are vital to the economy and culture of Falmouth. These regulations strive to balance the need to mitigate the human health and environmental impacts of disposable plastics against the daily decisions that must be made in order to operate a food establishment, while maintaining food safety.

Disposal products are typically used for minutes, hours, or a few days before they are discarded. If they are plastic, it can take hundreds of years for these products to decompose, resulting in microplastics in the environment and posing hazards to marine wildlife, soil, groundwater, and human health. The production of traditional plastics from fossil fuels also emits greenhouse gases. Although recycling remains important for plastics that are in use, it is not a complete solution to alleviating plastics in the environment. Importantly, many products made from plastic can be easily replaced by products made from natural fibers that degrade more readily and do not generate contaminants.

The objective of these regulations is to find implementable solutions to the growing plastics waste problem in Falmouth. Specifically, these regulations strive to reduce or eliminate the use of disposable plastic containers and utensils associated with prepared foods by food establishments in Falmouth.

In addition to the prohibitions and restrictions below, all food establishments in the Town of Falmouth are encouraged to significantly reduce or eliminate single-use disposable foodware and accessories and prioritize reusable alternatives.

1. Authority

The Falmouth Board of Health adopts these regulations in accordance with Massachusetts General Laws chapter 111, section 31, to provide for the protection of public health and the environment.

2. Definitions

Accessory Disposable Foodware - Disposable Foodware items such as straws, stirrers, napkins, utensils, condiment cups and packets, cup sleeves, tops, lids, and spill plugs, and other similar accessory or accompanying items used as part of food or beverage service or packaging.

ASTM International or ASTM - ASTM International, formerly known as the American Society for Testing and Materials, is a standards organization that develops and publishes voluntary consensus technical international standards for a wide range of materials, products, systems and services.

Certified Compostable - Compostable products certified as conforming to ASTM or other international standards, including ASTM standards D6400 and D6868 pertaining to biodegradability and the ability of the finished product to disintegrate, as well as products tested for plant toxicity and heavy metals. Certification must be provided by authorities on compostables such as Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), and OK Compost / TUV, for example, in reliance on ASTM or other international standards.

Compostable – Capable of undergoing aerobic biological decomposition under specific conditions within a specific timeframe, such that the material becomes visually indistinguishable and breaks down into carbon dioxide, water, inorganic compounds, and biomass consistent with ASTM International Standards.

Disposable Foodware - Containers, bowls, plates, trays, cartons, boxes, pizza boxes, cups, paper or foil wrappers, liners and any other items designed for single use to hold, serve, eat, or drink Prepared-on-Premises Food.

Due Diligence - For these regulations, due diligence is the investigation and analysis that a reasonable business or person is normally expected to undertake before requesting an Allowance or Waiver.

Leftover Container – Any container provided by a Food Establishment to a customer for leftover food not consumed on premises.

Food Establishment – As defined by 105 CMR 590.000.

Natural Fiber - A plant-based, non-synthetic fiber, including but not limited to paper, wood, bamboo, palm leaf, wheat straw, or sugarcane. Natural Fiber does not include plastic of any kind.

PHA – Polyhydroxyalkanoates, naturally-produced polyesters that are compostable in home and industrial settings, and degradable in marine and freshwater environments.

PLA – Polylactic acid, a plastic substitute made from fermented plant starch, usually corn. PLA is typically only compostable in an industrial facility.

Plastic - A synthetic material, typically derived from fossil fuels, made from a wide range of organic polymers such as polyethylene, PVC, nylon, etc., that can be molded into shape while soft and then set into a rigid or slightly elastic form.

Prepared-on-Premises Food - Foods or beverages that are prepared on the Food Establishment's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing or repackaging and which require no further preparation to be consumed. This does not include raw/uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw/uncooked meat products.

Resin Identification Code – A symbol or number from 1 to 7 on a plastic product that indicates the type of plastic used to make it.

Reusable Foodware - All foodware and accessory items, including plates, bowls, cups, trays, glasses, straws, stirrers, condiment cups and utensils, that are manufactured of durable materials and that are specifically designed and manufactured to be washed and sanitized and to be used repeatedly at the establishment over an extended period of time.

Takeout Container – Container used for Takeout Food.

Takeout Food - Prepared-on-Premises Food that is purchased from a Food Establishment to be consumed off premises. Takeout Food includes Prepared-on-Premises Food carried out by the customer or delivered by a Food Establishment or by a Takeout Food Delivery Service.

Takeout Food Delivery Service - A third-party delivery service that picks up Takeout Food from a Food Establishment and delivers it to the customer for consumption off the premises.

Undue Hardship - A significant difficulty or economic burden imposed on an individual or organization.

3. Foodware Standards

(a) Food Establishments must use reusable foodware unless such use would create undue financial hardship, as determined by the Health Agent or designee.

(b) Full service dine-in restaurants, where meals are primarily prepared individually for the customer and are served to customers at their table by waitstaff, must use reusable foodware.

(c) Unless specified elsewhere in this regulation, Food Establishments providing Disposable Foodware and/or Accessory Disposable Foodware for prepared food must select products composed of the following materials, unless a waiver or variance is received, as described in sections 4 and 5:

- Products made entirely of paper and wood that are not lined or coated
- Certified Compostable products that are not PLA
- Plastic-lined, including PLA-lined, cups made of paper, wood, or natural fiber that are used for hot liquids, and their associated lids
- Bioplastics that are third-party certified to be home compostable, e.g., PHA
- Glass
- Aluminum foil wrappers
- Aluminum containers with aluminum or cardboard lids

4. Waivers for Specific Plastics

(a) The Health Agent, or designee, may grant a waiver from these regulations for the use of specific plastics if the Food Establishment can demonstrate that they have attempted to comply with these regulations, but are unable to do so for any of the following reasons:

- (i) No suitable alternative exists;
- (ii) Supply chain issues are affecting alternative product availability; or
- (iii) The use of the suitable alternative would create undue financial hardship.

(b) The Food Establishment must be able to provide documentation of all due diligence taken in the effort to comply with these regulations.

(c) Waivers may be granted for the following products, only:

- Petroleum-based plastics identified by resin identification codes 1, 2, and 5 in any color other than black
- Plastic-lined, including PLA-lined, products made of paper, wood, or natural fiber
- Plastic, including PLA, wrap or film
- Window bags and window boxes that are made primarily from fiber with a plastic film window

(d) Documentation of due diligence under this regulation must be current and maintained by the Food Establishment and available to the Health Department upon request, including during routine inspections or complaint follow-up. Documentation should include a list of all non-compliant items and the efforts taken to replace each item. A form to be used for this purpose is available through the Health Department. During permit renewal, this form must be uploaded as an attachment to the renewal

application. Failure to upload the required documentation may result in an incomplete permit renewal application.

5. Variances

(a) The Board of Health, following a public hearing and an opportunity to be heard, may grant a variance from provisions of these regulations for the following purposes:

- (i) To use products not specified in sections 3 and 4;
- (ii) To request an extension of time for compliance, beyond what is permitted under these regulations.

(b) Every request for a variance must be submitted in writing and must state the specific provision from which relief is sought and the reasons therefore.

(c) No variance will be granted for black plastic or for No. 6 plastics unless no suitable alternatives exist for the specific application.

(d) Dine-in facilities that are granted a variance for the use of PLA must provide clearly-labeled compost collection bins onsite and proof of a contract for industrial compost collection services with a composter that accepts PLA. Facilities providing compost collection bins are urged to provide educational signage to assist their customers by clarifying which products are composed of PLA, a substance that cannot be recycled but can be composted in an industrial facility.

(e) The Board of Health may not grant a variance unless the applicant has demonstrated, based upon credible reliable evidence, that the enforcement of these regulations would create an undue hardship, and due diligence has been exercised in seeking compliance with these regulations.

(f) Any variance granted by the Board of Health must be in writing and the term of the variance is for one year from the date of issuance. Any denial of a variance shall also be in writing and contain a brief statement of the reasons for the denial.

(g) Any variance or other modification authorized under these regulations may be subject to such qualification, condition, revocation, suspension, or expiration as the Board of Health expresses in its grant. A variance or modification authorized to be made by these regulations may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformance with the requirements of 105 CMR 590.000 and/or 310 CMR 11.00, as may be applicable, for orders and hearings.

6. Accessory Disposable Foodware Items

(a) Accessory Disposable Foodware items are prohibited, unless requested by the customer, except that the following items may be provided without request, for safety reasons: disposable cups with lids, spill plugs, and sleeves at a drive through or for off-site delivery by a Food Establishment or a Takeout Food Delivery Service.

(b) Prepackaged Accessory Disposable Foodware items are prohibited unless they are packaged individually in paper.

(c) Food Establishments and Takeout Food Delivery Services must provide the option for customers to affirmatively request cutlery with their orders for food and beverages across all ordering/point of sale platforms, including but not limited to web, smartphone and other digital platforms, telephone, and in-person.

(d) Straws must be composed of PHA or paper.

(e) Stirrers must be composed of wood or other natural fiber.

7. Condiments

(a) Condiments for dine-in eating must be provided in bottles or at self-service dispenser stations that use paper cups. Disposable packets are prohibited for dine-in eating.

(b) The provision of condiments for take-out orders is prohibited unless condiments are requested by the customer.

(c) Food Establishments and Takeout Food Delivery Services must ensure that any web-based, digital point of sale platform that allows a customer to place an order online or through an application, provides an option for customers to affirmatively request condiments.

8. Leftover Containers

Leftover containers must be composed of non-PLA Certified Compostable materials, aluminum foil, or aluminum containers with aluminum or cardboard lids. Bags shall not be provided for takeout containers unless requested and must also be made of paper or other non-PLA Certified Compostable materials. No waiver shall be granted for the use of plastic bags or containers.

9. Enforcement

(a) These regulations may be enforced by the Board of Health or Health Agent through any lawful means at law or in equity, including, but not limited to, noncriminal disposition as set forth in section 10.

(b) Following a warning or fine issued pursuant to 105 CMR 590.000 and/or 310.11, a Food Establishment will have 60 days to return to full compliance with this regulation. Corrective action, when completed, must be documented for the Health Department. Offenses occurring within two years of the date of prior reported offense will be considered as subsequent offenses.

(c) Fines under this section shall be paid to the Town of Falmouth within 60 days.

10. Non-criminal Disposition

(a) Violations of these regulations may also be enforced by a civil fine where non-criminal disposition of this section is provided in § 1-2 of the Falmouth bylaws, as amended, and pursuant to the authority granted by M. G.L. c. 40 § 21D. The penalty for violations of these regulations shall be as follows:

- First offense: twenty-five dollar (\$25) fine;
- Second offense: fifty-dollar (\$50) fine;
- Third offense: one-hundred-dollar (\$100) fine;
- Fourth and subsequent offenses: two-hundred-dollar (\$200) fine.

Each day that a subsequent or continuing violation occurs shall constitute a separate offense. The civil penalty for each such violation is also set out in § 1-2 of the Falmouth bylaws.

(b) As a result of a fourth offense, or a failure to provide requested information within the timeframe established, the Board of Health shall conduct a hearing. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.000 and/or 310 CMR 11.00, as may be applicable, may suspend, revoke, or withhold renewal of the food service permit for any establishment failing to comply with this regulation.

11. Severability

The provisions of these regulations are severable. If any part of these regulations should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of the regulations, and the remainder of the regulations shall stay in full force and effect.

12. Effective Date

The effective date of this regulation is September 1, 2025.

As voted by the Board of Health on May 19, 2025.

Kevin Kroeger, Chairperson _____

Amy Roth _____

George Heufelder _____

Dr. George Topulos _____

Jed Goldstone _____