

SINGLE-USE PLASTIC BAG ORDINANCE

Art. I.	Purpose
Art. II	Definitions
Art. III	General Prohibition and Regulation
Art. IV	Exemptions to General Prohibition
Art. V	Penalties and Enforcement
Art. VI	Date of Effect
Art. VII	Hardship Deferments

ARTICLE I. PURPOSE

This Ordinance is intended to promote the public health, safety, welfare, and the responsible use of resources and protection of the environment. It seeks to mitigate the effect the single-use plastic bags provided within the Town, and encourage the use of reusable bags.

WHEREAS the Town of Wilmington is a Vermont municipal corporation located in Windham County; and

WHEREAS the Town of Wilmington has concern over the impact that single-use plastic bags have to the local, state and global environment; and

WHEREAS the Town of Wilmington has determined to take efforts to limit the use of single-use plastic bags by restricting the number of plastic bags available at retail establishments for residents and visitors;

WHEREAS the Town of Wilmington has the power to “regulate or prohibit the storage or dumping of solid waste, as defined in 10 V.S.A. § 6602” pursuant to 24 V.S.A. § 2291(12).

NOW THEREFORE, the Town of Wilmington hereby adopts the following Ordinance:

ARTICLE II. DEFINITIONS

Definitions:

(A) As used in this ordinance, the following terms have the meaning indicated by the definition.

ASTM D6400 standard specification means the standard specification for labeling of plastics designed to be aerobically composted in municipal or industrial facilities set by the American Society for Testing and Materials.

Compostable Bag means a bag that meets the current ASTM D6400 for compostability.

Recyclable means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. “Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

Retail Establishment means all sales outlets, stores, shops, pharmacies, or other places of business located within the Town of Wilmington which sell or convey merchandise directly to the ultimate consumer.

Retail Food Establishment means all sales outlets, stores, shops, restaurants, markets, supermarkets, clubs or other places of business which sell, serve or convey foods directly to the ultimate consumer. This definition shall include by is not limited to any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, sold or offered to the public; similar places in which food or drink is prepared for sale or service on the premises or elsewhere; and any other establishment or operation, including in-home caterers, where food is processed, prepared, sold, served or provided for the public, regardless of whether there is a charge for the food.

Retail Service Establishments means all places of business located within the Town of Wilmington where a service, specialized or professional work is offered to the public, regardless of whether there is a charge for the service.

(B) Shopping bag definitions. As used in this section, the following terms shall have the meanings indicated:

Compostable Plastic Bags means a bag that is:

1. Labeled in a manner that is readily and easily identifiable from other plastic bags;
2. Labeled in a manner that is consistent with the Federal guides for the use of environmental marketing claims;
3. Labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification; and
4. (i) a uniform color of green and labeled with the word “compostable” in at least a 1 inch font on one side of the bag; (ii) labeled in green writing with the word “compostable” in at least a 1 inch font on both sides of the bag; or (iii) labeled with the word “compostable” in at least a one-half inch font on both sides of the bag within a green color band that: 1. Contrasts with the compostable bag’s background color; and 2. Is at least 1 inch in height.

Plastic Bag means any bag made of plastic derived from either petroleum, ethylene derived from natural gas, polyethylene, polypropylene, or nylon.

Reusable Bag means a bag that meets the following requirements: (a) has a minimum lifetime of 125 uses, which for the purposes of this ordinance means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (b) has a minimum volume of 15 liters; (c) is machine washable or is made of a material that can be cleaned or disinfected; (d) does not contain lead in an amount greater than 89 parts per million (ppm), nor contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case such standards shall apply; (e) has printed on the bag, or on a tag that is permanently affixed to the bag, (1) the name of the manufacturer, (2) the country where the bag was manufactured, (3) a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, (4) the percentage of Postconsumer Recycled Material used, if any, and (5) bag care and washing instructions; and (f) if made of plastic, is no less than 1.0 mils thick anywhere on the bag.

Thin-Film Single-Use Plastic Bag means a bag with a thickness of 1.0 mils or less and which are intended for single-use transport of purchased products.

ARTICLE III. GENERAL PROHIBITION AND REGULATION

General prohibition and regulation. No retail establishment, retail food establishment, or retail service establishment as defined in Subsection A, shall sell or convey merchandise to ultimate consumers in thin-film single-use plastic bags, and said establishments shall only use such bags that are:

- (1) Reusable bags; or
- (2) Compostable plastic bags; or
- (3) Paper Bag.

ARTICLE IV. EXEMPTIONS TO GENERAL PROHIBITION

Exemptions. Article III of this regulation shall not apply to the following items:

- (1) Thin-film plastic bags used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items, and other similar merchandise, typically manufactured as thin-film single use bags without handles;
- (2) Any flexible transparent covering for covering uncooked raw meat, poultry, raw fish, hard cheese, cold cuts, fruit, and vegetable products, baked goods, or bread;

ARTICLE V. PENALTIES AND ENFORCEMENT

- (1) If it is determined that a violation of any subsection of this section has occurred, the Town shall issue a warning notice for the initial violation.
- (2) If an additional violation of this section occurs within one year of the initial violation, the Town Manager's Office shall issue a second notice of violation.
- (3) The Town shall impose a penalty against the retail establishment for the third and each subsequent violation.
- (4) The penalty for each violation that occurs after the issuance of the first and second warning notice shall be no more than: i) \$50.00 for the first offense, with a waiver fee of \$25.00; ii) \$100.00 for the second offense and all subsequent offenses, with a waiver fee of \$50.00. Payment shall be made to the Town of Wilmington within 30 days to the Town Treasurer. Nonpayment of such fines may be enforced by the Judicial Bureau. No more than one penalty shall be imposed upon a retail establishment within a 24-hour period.

ARTICLE VI. DATE OF EFFECT

Date of Effect. This section will take effect on July 1, 2019.

ARTICLE VII. HARDSHIP DEFERMENTS

Hardship deferments.

- (1) Upon written application, the Town Manager's designee may defer application of any subsection of this section for a six-month period after the effective date stated in Subsection F upon a showing of hardship. Hardship will be found when:
 - a. Compliance with any subsection would cause significant economic difficulty; or
 - b. There is no readily available compliant substitute.
- (2) Any entity granted a deferment by the Town Manager's designee must reapply prior to the end of the six-month 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 six months.
- (3) A deferment granted in accordance with this subsection may be extended for no more than two additional six-month periods, upon which a written application to the Town Manager's designee at least two months prior to the expiration of the prior deferment period and upon a showing that the circumstances justify deferment continue to exist.
- (4) A deferment application shall include all information necessary for the Town Manager's designee to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The

Town Manager's designee may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.

- (5) The Town Manager's designee may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the environment and/or public health and further the interests of this section.
- (6) Deferment decisions are effective immediately and final.