

ORDINANCE PROHIBITING SINGLE-USE PLASTIC BAGS IN THE TOWNSHIP OF MONTCLAIR

BE IT ORDAINED, by the Township Council of the Township of Montclair, Essex County, New Jersey, as follows:

§1 Definitions.

The following definitions apply to this chapter:

COMPLIANT BAG

Recyclable paper carry-out bags and reusable bags.

A. A recyclable paper carry-out bag is a paper bag that meet all of the following minimum requirements:

- (1) It is one-hundred-percent recyclable overall and contains a minimum of 40% post-consumer recycled material;
- (2) It can be composted; and
- (3) It displays the words "recyclable" and/or "reusable" in a highly visible manner on the outside of the bag.

B. A reusable bag is a bag made of cloth or other washable fabric with handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

- (1) It has a minimum lifetime of 125 uses;
- (2) It can carry a minimum of 22 pounds;
- (3) It is machine-washable or is made from a material that can be cleaned or disinfected;
- (4) It does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations; and
- (5) If made of plastic, it is a minimum of at least 2.25 mils thick.

CUSTOMER

Any person purchasing goods or services from a retail establishment.

OPERATOR

The person in control of, or having the responsibility for, the operation of a retail establishment, which may include, but is not limited to, the owner of the retail establishment.

PERSON

Any natural person, firm, corporation, partnership, or other organization or group, however organized.

POST-CONSUMER RECYCLED MATERIAL

A bag constructed of a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

PRODUCE BAG or PRODUCT BAG

A very thin bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a retail establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

RECYCLABLE

Material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of reusing the altered, incinerated, converted, or otherwise thermally destroyed solid waste generated therefrom.

RETAIL ESTABLISHMENT

Any store or commercial establishment that sells perishable or nonperishable goods, including, but not limited to, clothing, food, and personal items, directly to the customer and is located within or doing business within the geographical limits of the Township of Montclair. Retail establishments include: a business establishment that generates a sales or use-tax; a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other commercial entity engaged in the retail sale of a limited line of goods that include milk, bread, soda, and snack foods; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises); and a business establishment that sells clothing, hardware, or any other nonperishable goods. "Retail establishment" does not include nonprofit charitable reusers as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization that reuses and recycles donated goods or materials and receives more than 50% of its revenues from the handling and sale of those donated goods or materials.

SINGLE-USE PLASTIC CARRY-OUT BAG

Any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, that is provided by an operator of a retail establishment to a customer at the point of sale. The term includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags. This definition specifically exempts the following from the category of "single-use plastic carry-out bag":

A. Bags provided by operators and used by consumers inside retail establishments to:

- (1) Package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
- (2) Contain or wrap frozen foods, meat, or fish, whether packaged or not;
- (3) Contain or wrap flowers, potted plants, or other items where dampness may be an issue;
- (4) Contain unwrapped prepared foods or bakery goods; or
- (5) Pharmacy prescription bags.

B. Newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, yard waste bags, or pet waste bags.

§2 Single-use plastic carry-out bags prohibited.

No retail establishment shall provide to any customer a single-use plastic carry-out bag, as defined in §1, above. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to product bags or to produce bags used to carry produce within the retail establishment to the point of sale. The prohibition applies to single-use plastic carry-out bags used for take-out deliveries from retail establishments within the Township of Montclair. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

§3 Availability and use of compliant bags.

A. All retail establishments shall make available to customers, for a fee, compliant bags, as defined herein, for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this chapter. The fee charged shall be reflected in the sales receipt.

B. Nothing in this chapter prohibits customers from using bags of any type that they choose to bring to retail establishments themselves, in lieu of using bags available for a fee from the retail establishment, or from carrying away goods that are not placed in a bag.

§ 4 Fees for provision of compliant bags.

A. All retail establishments shall make recyclable paper carry-out bags available to customers upon request for a fee of at least \$0.10 but not more than \$0.25 per bag if customers choose not to bring their own reusable bags.

B. A retail establishment may provide customers with a reusable bag, as defined herein, for a fee of at least \$0.10.

§ 5 Use of reusable bags encouraged.

A. All retail establishments must provide customers with compliant bags, upon request, if customers fail to bring their own bags, in accordance with the fee structure set forth in §4, above. A retail establishment may choose, in its discretion, to provide a credit to customers that choose to bring their own bags.

B. Each retail establishment shall be strongly encouraged to educate its staff to promote the use of reusable bags and to post signs encouraging customers to use reusable bags rather than recyclable paper carry-out bags.

§6 Exempt customers.

A. All retail establishments must provide at the point of sale, free of charge, compliant bags, at the retail establishment operator's option, to any customer who participates in, or is a beneficiary of, any United States government federal welfare program, or any local or Essex County welfare assistance program, or any New Jersey State welfare program, including but not limited to the New Jersey Supplemental Nutritional Assistance Program (SNAP) or the New Jersey State Supplemental Security Income Program (SSI).

B. The Manager may approve, with the concurrence of the Township Council Committee with jurisdiction, a request for an exemption from the requirements of this chapter by any operator of a retail establishment, with or without conditions. If the Council Committee withholds or denies concurrence on an exemption, the Manager may seek concurrence from the City Council as a whole, but concurrence from the Committee or the Council is required for the granting of an exemption.

C. Exemption decisions are effective upon approval and are final, and they are not appealable, except otherwise provided for by law.

D. The fee for exemption requests of \$100.

§7 Availability of information; education of employees.

A. The Township shall assist operators of retail establishments by referring them to appropriate municipal websites with information, to retail associations, unions, and other organizations to create educational materials concerning the benefits of reusable bags rather than recyclable paper carry-out bags, and to locate sources for the wholesale purchase of reusable bags. Any such information may include signage at retail establishment locations, informational literature, and employee training and shall take place before and after the operative date.

B. All retail establishments shall be strongly encouraged to educate their staff in ways to promote reusable bags as the best environmental and economic option for carry-out bags and to post signs encouraging customers to use reusable bags.

§8 Enforcement; violations and penalties.

A. The Division of Code Enforcement shall be responsible for enforcement of this chapter and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines. Any rules and regulations so promulgated shall be filed with and available from the Township Clerk.

B. Any retail establishment that violates or fails to comply with any of the requirements of this chapter after an initial written warning notice has been issued for that violation shall be liable for an infraction.

C. If a retail establishment has subsequent violations of this chapter after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and shall be payable by the operator of the retail establishment:

(1) A fine not exceeding \$100 for the first violation after the written warning notice is given;

(2) A fine not exceeding \$200 for the second violation after the written warning notice is given; or

(3) A fine not exceeding \$500 for the third and any subsequent violations after the written warning notice is given.

D. A fine shall be imposed for each day a violation occurs or is allowed to continue.