



MODEL PLASTIC BAG POLLUTION REDUCTION ORDINANCE by ANJEC

AN ORDINANCE ENTITLED "PLASTIC BAGS" TO REGULATE THE USE BY RETAIL ESTABLISHMENTS OF SINGLE USE PLASTIC CARRY-OUT BAGS AND RECYCLABLE PAPER BAGS AND TO PROMOTE THE USE OF REUSABLE BAGS IN THE (municipality).

Definitions.

The following definitions apply to this ORDINANCE:

COMPLIANT BAG — Recyclable paper carry-out bags and reusable bags.

A. A recyclable paper carry-out bag is a paper bag that meets 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 sewn bag made of cloth or other washable fabric with stitched handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:

- (1) It is machine-washable or is made from a material that can be cleaned or disinfected other than polypropylene, polyvinyl chloride, or labeled as made with biodegradable/bioplastics material.
- (2) 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
- (3) It is affixed with a statement that the bag is a reusable bag, as well as recycling instructions if the bag is recyclable

COMPOSTABLE PLASTIC - Plastic that undergoes degradation by biological processes during composting to yield CO₂, water, inorganic compounds, and biomass at a rate consistent with other known compostable materials and that leaves no visible, distinguishable, or toxic residue

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. The material must be recycled in a manner that is environmentally effective, economically feasible, and safe for employees as deemed feasible by the municipality.

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 (municipality). 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 organization 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.

Single-use plastic carry-out bags prohibited.

No retail establishment shall provide to any customer a single-use plastic carry-out bag, as defined 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 municipality. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

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.

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.
- C. All monies collected by retail establishments under this chapter shall be retained by the store.

Use of reusable bags encouraged.

- A. 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.
- C. A retail establishment is strongly encouraged to educate on plastic bag and plastic film recycling and offer a take back program.

Reporting.

A. No later than (month, day, year), and annually thereafter, the (department) shall report to the governing body on the progress of carry-out bag reduction, which may include the following:

- (1) The amount of carry-out bags in the residential waste and recycling streams;
- (2) The amount of carry-out bags identified as litter on streets, sidewalks and in parks;
- (3) The amount of carry-out bags found in city storm drains;
- (4) The number of warning notices or notices of violation issued pursuant to this chapter;
- (5) Any estimated cost savings for the (municipality) attributable to carry-out bag reduction such as reduced contamination of the residential recycling stream, or reduction in flooding or combined sewer overflows.

B. The (governing body) may choose to increase the fee for compliant bags for continued enforcement of behavioral change.

Enforcement; violations and penalties.

The department (E.g., Code Enforcement, Director of the Department of Environmental Services), or his/her designee, has the responsibility 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.

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.

E. Any appeal of a written warning notice or fine shall be conducted pursuant to standard municipal regulations and procedures concerning appeals already adopted by the (municipality)

Authority to promulgate rules.

The (department) shall have the authority to promulgate rules as necessary and appropriate for the implementation of this chapter.

Severability.

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Effective Date.

This Ordinance shall take effect six months after passage and publication as provided by law.

MODEL AMNEC