

ORDINANCE 47-2019

ORDINANCE OF THE BOROUGH OF MADISON PROHIBITING THE USE OF PLASTIC BAGS AND REGULATING THE USE OF PAPER BAGS BY RETAIL ESTABLISHMENTS WITHIN THE BOROUGH OF MADISON

The purpose of this Ordinance is to encourage the use of reusable bags by customers by reducing the use of disposable paper and plastic non-reusable check out bags by retail establishments in the Borough of Madison.

WHEREAS, on average, one person uses 500 single-use disposable bags per year, 4 billion single use shopping bags are used annually in New Jersey, and 102 billion are used nationwide; and

WHEREAS, windblown plastic bags degrade our land and waterways, and 80% of the plastic and trash that finds its way into our oceans comes from the land; and

WHEREAS, 12 million barrels of oil are used annually to manufacture the plastic bags that Americans use; and

WHEREAS, according to the EPA, seabirds, fish, and other marine and land-based wildlife mistake plastic for food, while others can become entangled in the plastic trash, thus leading to exhaustion, starvation, and eventual death; and

WHEREAS, plastic breaks down into microplastics that measure 5 millimeters or less, which are ingested by shrimp, plankton, fish, birds, turtles, and other sea creatures. Microplastics absorb toxic chemicals, harms marine life, and can be consumed by humans via seafood and potable water; and

WHEREAS, it is beyond dispute that the use of single-use, plastic carryout bags has a severe and negative environmental impact on the local and global environment as a result of the greenhouse gas emissions emitted to produce such bags, the land-based and ocean-based pollution created, the hazards posed to wildlife, the hazards posed to sources of water for humans, and the negative impact on the ecosystem and food chain as a whole; and

WHEREAS, 5% or fewer single-use carryout bags are actually recycled; and

WHEREAS, the Borough of Madison taxpayers currently bear the costs associated with the negative impact of plastic, single-use carryout bags; and

WHEREAS, the Borough of Madison taxpayers currently bear the costs associated with improper placement of plastic bags in recycling containers resulting in increased costs for contaminated recycling; and

WHEREAS, the use of paper carry-out bags has a present adverse impact on the environment, this impact is less than single use plastic carry-out bags as plastic bags may take hundreds of years to degrade releasing toxic materials during the process; and

WHEREAS, Madison Borough residents understand that reusable bags consume far less energy and natural resources than single use plastic carry-out bags and paper carry out bags; and

WHEREAS, the Borough of Madison desires to reduce the number of disposable paper and plastic checkout bags that are being burned, used, discarded and littered and to promote the use of reusable checkout bags by retail establishments located within the Borough of Madison; and

WHEREAS, the Borough Council of the Borough of Madison finds that the reduction in the use of disposable paper and plastic checkout bags by retail establishments within the Borough of Madison promotes a legitimate public purpose; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, a municipality in New Jersey may enact such ordinances "as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants"; and

WHEREAS, regulating the use of plastic bags and paper bags will preserve the public health, safety, and welfare of the municipality.

NOW, THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Madison, County of Morris, State of New Jersey as follows:

Section 1. Chapter 136A (Plastic Bags, Single Use) of the Code of the Borough of Madison is hereby inserted to read as follows:

136A-1 DEFINITIONS

As used in this Chapter, the following terms shall have the meanings indicated.

Customer Any person purchasing goods or services from a retail establishment.

Operator Any 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.

Reusable Bag Any bag with handles that is specifically designed and manufactured to withstand repeated uses over a period of time and is made from cotton cloth or other washable fabric, polyester, polypropylene, or other durable material or plastic that is at least 10 mils in thickness and meets the following criteria:

- Has a minimum life capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet; and

- Is machine washable or is made from a material that can be cleaned or disinfected.

Single use plastic carry-out bag Any bag made predominantly of plastic that is not made or intended for reuse that is provided by an operator of a retail establishment to a customer at the point of sale. 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:

- package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
- contain or wrap frozen foods, meat, or fish, whether packaged or not;
- contain or wrap flowers, potted plants, or other items where dampness may be an issue;
- contain live animals, such as fish or insects sold in pet stores;
- contain unwrapped prepared foods or bakery goods; or
- contain pharmacy prescriptions or medicines; or
- function as "produce bags" or "product bags," which shall mean bags 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.

(b) Newspaper bags for home delivery, 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.

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 the geographical limits of the Borough of Madison. 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 business establishment that sells clothing, a hardware store, or any other non-perishable goods.

136A-2: USE PROHIBITED; EFFECTIVE DATE

- A. Effective March 1, 2020, no retail establishment shall provide to any customer, or to any person, a single use plastic carry-out bag, as defined in 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 produce bags used to carry product(s) or 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 Borough of Madison. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.
- B. Effective March 1, 2020, single use plastic carry-out bags may not be distributed on Borough property or at Borough-sponsored events.

136A-3: MANDATORY FEE; EFFECTIVE DATE

- A. Effective March 1, 2020, all retail establishments shall make available to customers, upon request by the customer, for a fee of .10 (ten cents) per bag, paper bags for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this Ordinance. The fee charged shall be reflected in the sales receipt and shall be subject to applicable tax. The fee charged shall be retained by the retail establishment.
- B. The following bags provided by operators of retail establishments shall be exempt from the .10 (ten cents) fee:
 - (1) Bags to package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
 - (2) Bags that contain unwrapped prepared foods or bakery goods;
 - (3) Bags to take home uneaten food that has been served in a restaurant;
 - (4) Take out foods intended for consumption away from the retail establishment for reasons of public health and safety during the transportation of such food products;
 - (5) Bags that contain pharmacy prescriptions and medicinal products; or
 - (6) Bags that function as "produce bags" or "product bags," which shall mean bags 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.

136A-4: PROMOTION OF REUSABLE BAGS

- (A) 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 paper carry-out bags.

- (B) Each retail establishment shall be strongly encouraged to educate its staff to ask customers if they have their own reusable bags before offering paper carry-out bags to the customer.
- (C) Each retail establishment shall inform customers that if they choose a paper carry-out bag they will be charged a fee of .10 (ten cents) per paper bag.
- (D) Nothing in this Ordinance 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.
- (E) Nothing in this Ordinance shall prohibit a retail establishment from providing a credit to a customer who has supplied his/her own bags.
- (F) Nothing in this Ordinance shall prohibit a retail establishment from offering for sale reusable bags, including those made of cloth or other fabric with handles that are specifically designed and manufactured for multiple reuse, for a fee of .10 (ten cents) or greater.
- (G) The Borough of Madison shall undertake a reusable bag education program that includes:
 - (1) distributing information and free reusable bags as part of a Bring Your Own Bag (BYOB) campaign; and
 - (2) maintaining "Give One Take One" reusable bag collection boxes in municipal and other facilities.

136A-5: EXEMPT CUSTOMERS

- (A) Any customer who states that she or he participates in, or is a beneficiary of, any United States government federal welfare program, including but not limited to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or any local or 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) shall be provided paper bags without charge. No further identification is necessary.
- (B) Any person who receives food, household items and/or personal care items from a food pantry or food distribution program shall be provided paper or reusable bags without charge.

136A-6: ENFORCEMENT / PENALTIES

- (A) The Madison Health Officer and/or his/her designee has the responsibility for

enforcement of this Ordinance and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing Summons and fines.

- (B) Any retail establishment that willfully violates or fails to comply with any of the requirements of this Ordinance 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 Ordinance after the issuance of an initial written warning notice of a violation a Summons will be issued and, the following penalties will be imposed and payable by the operator of the retail establishment:
 - a. \$100.00 for the first violation after the first written warning notice is given;
 - b. \$200.00 for the second violation after the written warning notice is given; and
 - c. \$500.00 for the third and any subsequent violations after the written warning notice is given
- (D) Fines shall be imposed for each day a violation occurs or is allowed to continue. A retail establishment shall not be subject to more than one fine for violations or continuing violations that occur on the same day.
- (E) Appeal of a written warning notice or fine shall be conducted pursuant to standard municipal regulations and procedures concerning matters to be heard in the Joint Municipal Court of Madison, the Chathams, Harding and Morris Township.

Section 2: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

Section 3: 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.

Section 4: EFFECTIVE DATE

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

ADOPTED AND APPROVED

ROBERT H. CONLEY, Mayor

Attest:

ELIZABETH OSBORNE, Borough Clerk