

O-19-022

TOWNSHIP OF MONTCLAIR

ORDINANCE PROHIBITING SINGLE-USE PLASTIC BAGS

June 25, 2019 (date of introduction)

October 29, 2019 (amendment and re-introduction)

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 meets all of the following requirements:

- (1) It is one-hundred-percent recyclable 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; and
- (2) It can carry a minimum of 22 pounds; and
- (3) It is machine-washable or is made from a material that can be cleaned or disinfected; and
- (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 high volume retail establishment.

HIGH VOLUME RETAIL ESTABLISHMENT

A high volume retail establishment is a retail establishment defined below that meets one of the following criteria: 1. Retail establishments that have a retail space of 2,500 square feet or larger (excluding storage space) or have at least three (3) locations under the same name within the Township of Montclair that total 2,500 square feet or more 2. Retail pharmacies with at least two (2) locations under the same ownership within the Township of Montclair. 3. Full-line, self-service supermarkets that had annual gross sales in excess of \$1,000,000 during the previous tax year which sell a line of dry groceries, canned goods, or nonfood items and some perishable items.

OPERATOR

The person in control of, or having the responsibility for, the operation of a high volume retail establishment, which may include, but is not limited to, the owner of the high volume 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 high volume 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 high volume 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 high volume 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 high volume 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 high volume retail establishment to the point of sale. The prohibition applies to single-use plastic carry-out bags used for take-out deliveries from high volume retail establishments within the Township of Montclair. The point of sale in such transactions is deemed to be at the high volume retail establishment, regardless of where payment for the transaction physically occurs.

§3 Availability and use of compliant bags.

- A. All high volume retail establishments may 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 high volume retail establishments themselves, in lieu of using bags available for a fee from the high volume retail establishment, or from carrying away goods that are not placed in a bag. A high volume retail establishment may choose, in its discretion, to provide a credit to customers that choose to bring their own bags.

§ 4 Fees for provision of compliant bags.

A. High volume retail establishments providing compliant bags to customers on request shall charge a fee of at least \$0.10 but not more than \$0.25 per bag.

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

§ 5 Exempt operators

A. The Manager may approve a request for an exemption or a deferral of the application and enforcement of this chapter by any operator of a high volume retail establishment, with or without conditions, upon a showing of substantial hardship or other good cause. Exemptions should only be granted in unusual circumstances outside the regular course of business. Deferrals should be granted only for the minimum time necessary to accommodate the reason for the deferral. .

B. Exemption and deferral decisions are effective upon approval and are final, and are not appealable, except as otherwise provided for by law.

C. The fee for exemption and deferral requests is \$100.

§6 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 furtherance thereof. Any rules and regulations so promulgated shall be filed with and available from the Township Clerk.

B. Any high volume retail establishment that violates or fails to comply with any of the requirements of this chapter after a written warning notice has been issued for that violation shall be subject to penalty.

C. Violations of this chapter after the issuance of written warning notice of a violation shall be subject to the following penalties payable by the operator of the high volume 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;
- (3) A fine not exceeding \$500 for the third and any subsequent violations after the written warning notice is given.

D. Each day a violation occurs or continues constitutes a separate violation.

§7 Effective date.

- (1) This ordinance shall take effect as provided by law.
- (2) High volume retail establishments shall be subject to this ordinance on its effective date.