

RESOLUTION NO. 2018274

RE: LOCAL LAW NO. ____ of 2018, A LOCAL LAW ENCOURAGING THE USE OF REUSABLE BAGS VIA THE IMPLEMENTATION OF A SURCHARGE ON CARRYOUT DISPOSABLE BAGS

Legislators PAGE, ZERNIKE, EDWARDS, LLAVERIAS, JETER-JACKSON, and TYNER offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No. _____ of 2018 which has been submitted this day for consideration by said Legislature.

BE IT ENACTED by the County Legislature of the County of Dutchess, State of New York as follows:

SECTION 1. Legislative Findings and Intent.

The Dutchess County Legislature hereby finds as follows:

- 1. Data released by the United States Environmental Protection Agency shows that between five hundred billion and one trillion plastic bags are consumed worldwide each year; and**
- 2. Plastic bags do not biodegrade; over time, the bags break down into smaller, more toxic petro-polymers which eventually contaminate soils, waterways, plant, and animal life; and**
- 3. Plastic bags can have a devastating effect on wildlife; birds can become entangled in the bags and different species of sea life can die from ingesting plastic bags which they mistake for food; and**
- 4. Plastic shopping bags are made from polyethylene, a thermoplastic made from oil. Accordingly, reducing the use of plastic bags will decrease our dependence on fossil fuels; and**
- 5. Less than ten percent of plastic bags are recycled, in part, due to the fact that it costs more to recycle a bag than to produce a new one; and**
- 6. Recycling plants face significant costs associated with plastic bags, with related costs at the Republic recycling plant located in the City of Beacon running well above one hundred thousand dollars annually; and**
- 7. Americans consume more than ten billion paper bags each year and fourteen million trees are cut down yearly for the manufacturing of paper; and**
- 8. Paper production requires large amounts of water, energy, and chemicals and can emit toxic and hazardous chemicals into the air and water; and**
- 9. The nation's paper industry generates more than twelve million tons of solid waste every year; and**
- 10. The following municipalities in New York have already passed legislation aimed at limiting the use of disposable bags: Village of East Hampton, Town of East Hampton,**

Village of Southampton, Town of Southampton, City of Rye, Village of Larchmont, Village of Mamaroneck, Hastings on Hudson, Village of New Paltz, Town of New Castle, Village of Patchogue, New York City, City of Long Beach, Suffolk County, Town of Bedford, Town of Lewisboro, Village of Pleasantville; and

11. The first survey conducted in Suffolk County, NY after their January 1, 2018, introduction of a five cent fee on all carryout bags found a thirty-seven percent increase in the use of reusable bags (from six percent of those surveyed before the introduction of the fee to forty-three percent of those surveyed after its introduction), and a forty-one percent reduction in shoppers choosing to use plastic bags (from seventy-one percent pre-fee to thirty percent post-fee); and
12. There is evidence that a larger fee on disposable bags has a greater impact on reducing their use. For example, Ireland's twenty-two European cent levy has resulted in a ninety-five percent reduction in plastic bag use;

THEREFORE, this Legislature concludes that in lieu of enacting a total ban of plastic bags, the County of Dutchess should instead require stores to charge a ten cent (\$0.10) fee on all carryout bags. If this approach fails to reduce the use of plastic bags by at least seventy percent, the idea of an outright ban may be revisited at a later date; and

THEREFORE, the purpose of this local law is to encourage consumers in Dutchess County to use their own reusable bags for shopping by requiring not less than a ten cent (\$0.10) charge on carryout bags that are provided at retail stores.

SECTION 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

"CARRYOUT BAG" shall mean any bag that is provided by a covered store to a customer at the point of sale and is used to carry goods from such store, provided, however, that such term shall not include any of the following: (i) a bag without handles used to carry produce, meats, poultry, fish, dairy, dry goods or other non-prepackaged food items to the point of sale within a covered store or to prevent such food items from coming into direct contact with other purchased items; (ii) a bag provided by a pharmacy to carry prescription drugs; (iii) a garment bag; or (iv) any other bag exempted from the provisions of this local law.

"COVERED STORE" shall mean an establishment engaged in the retail sale of personal, consumer, or household items including but not limited to drug stores, pharmacies, grocery stores, supermarkets, convenience stores, foodmarts, apparel stores, home center and hardware stores, stationery and office supply stores, and food service establishments located within grocery stores, supermarkets, convenience stores, or foodmarts, that provide carryout bags to customers in which to place purchased items. This term does not include food service establishments located outside of grocery stores, supermarkets, convenience stores, or foodmarts.

"FOOD SERVICE ESTABLISHMENT" shall mean a place where prepared food is provided for individual portion service directly to a consumer whether consumption occurs on or off the

premises.

“PERSON” shall mean any natural person, firm, corporation, partnership, or other organization or group however organized.

“RETAIL SALES” shall mean the transfer to a customer of goods in exchange for payment occurring in retail stores, sidewalk sales, farmers’ markets, and flea markets. The term “retail sales” does not include sales of goods at yard sales, tag sales, and other sales by residents at their homes.

“REUSABLE CARRYOUT BAG” shall mean a bag with handles that is specifically designed and manufactured for multiple reuse and is either: (1) made of cloth or other machine washable material, but not film plastic; or (2) made of durable plastic that is at least 2.25 mils thick. Reusable carryout bags provided to customers pursuant to this local law shall be conspicuously labeled as reusable.

SECTION 3. Carryout bag fee.

A. Covered stores shall charge a fee of not less than ten cents for each carryout bag provided to any customer. All fees collected by a covered store under this local law shall be retained by the store. Covered stores shall separately itemize the fee charged pursuant to this local law on the standard receipt provided to customers.

B. No covered store shall charge a fee for, or prevent a customer from using, any carryout bag brought by the customer to such store to carry purchased goods from such store.

SECTION 4. Additional obligations of covered stores.

A. Paper carryout bags provided by covered stores to customers shall contain a minimum of forty percent post-consumer recycled content and be conspicuously labeled with the amount of post-consumer recycled content.

B. Plastic carryout bags provided by covered stores to customers labeled as “compostable” must be certified as compliant with the ASTM D6400-12 standard specification for labeling of plastics designed to be aerobically composted in municipal or industrial facilities or other standard determined by the Dutchess County Department of Behavioral and Community Health. Plastic carryout bags provided by covered stores to customers shall not be labeled as “biodegradable,” “degradable,” or “decomposable.”

C. Covered stores may provide their customers with reusable carryout bags free of charge for a two-week period from December 1, 2019, to December 31, 2019. In addition, covered stores may provide their customers with reusable carryout bags free of charge for a two-week period each year from December 1 to December 15.

SECTION 5. Reporting.

No later than March 1, 2021, and annually thereafter, the Commissioner of the Dutchess County Department of Behavioral and Community Health and the head of any other department or office designated by the Legislature, shall prepare an annual recycling report that includes information on the progress of single-use carryout bag reduction including but not limited to: (1) the general effectiveness of this local law in reducing the use of single-use carryout bags in the county and increasing the use of reusable carryout bags; (2) the waste and litter reduction benefits of this local law, including, where practicable, the amount of single-use plastic bags in the waste stream; (3) the number of notices of violation issued pursuant to this local law; and (4) any cost savings for the county attributable to single-use carryout bag reduction such as reduced contamination of local waterways or reduction in flooding or combined sewer overflows.

SECTION 6. Deduction from Employee Wages Prohibited.

Covered stores are prohibited from making a charge against, or deduction from, the wages of an employee to offset any penalty addressed against the covered store pursuant to this law.

SECTION 7. Enforcement.

This law shall be enforced by the Dutchess County Department of Behavioral and Community Health in accordance with the provisions of Article II, Section 2.1 et seq., of the DUTCHESS COUNTY SANITARY CODE.

SECTION 8. Rules and Regulations.

The Commissioner of the Department of Behavioral and Community Health is hereby authorized and empowered to promulgate rules and regulations necessary to enforce this law.

SECTION 9. Penalties for Offences.

Any violation of this law shall be punishable by a civil fine of Five Hundred (\$500.00) dollars for each.

SECTION 10. Effect of other Laws, Regulations.

This law will not impair or supersede any ordinance, resolution or local law enacted by a village or town within the County of Dutchess which prohibits retail stores operating within their jurisdiction from distributing or providing plastic and/or paper bags to their customers.

SECTION 11. Reverse Preemption.

This law shall be null and void on the day that Statewide or federal legislation goes into

effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or federal administrative agency issues and promulgates regulations preempting such action by the County of Dutchess. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION 12. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

SECTION 13. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 15. Effective Date.

This law shall take effect on January 1, 2020.