

DATE \_\_\_\_\_

NUMBER 14-2020

**TITLE: AN ORDINANCE TO PROHIBIT THE USE OF PLASTIC BAGS AND REGULATE THE USE OF PAPER BAGS BY RETAIL ESTABLISHMENTS WITHIN THE CITY OF ORANGE TOWNSHIP (Sponsored by Council Member Adrienne Wooten)**

**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 make the plastic bags that Americans use; and

**WHEREAS**, according to the EPA, seabirds, fish, and other marine and land-based animals mistake plastic for food, while others can become entangled in the trash, 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 animals. 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**, very few single-use carryout bags are actually recycled (it is estimated that less than 5% of all plastic bags are actually recycled and some estimates are as low as 1%); and

**WHEREAS**, the City of Orange Township taxpayers currently bear the costs associated with the negative effects of plastic, single-use carryout bags on the solid waste stream, drainage, litter, and the negative consequences of the foregoing environmental impacts; and

**WHEREAS**, the City of Orange Township taxpayers currently bear the costs associated with improper placement of plastic bags in the recycling containers incurring penalty fees from the recycling end-user for contaminated recycling; and

**WHEREAS**, all single-use carry-out bags are wasteful, and while paper carry-out bags present adverse impacts on the environment, these impacts are less than single-use plastic carry-out bags because they naturally decompose in the environment while plastic bags degrade at a much slower rate and release toxic materials during that process as well as pollute waterways; and

**WHEREAS**, the City of Orange Township residents understand that reusable bags consume far less energy and natural resources than single-use plastic carry-out bags and paper carryout bags; and

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

**WHEREAS**, the City of Orange Township finds that the reduction in the use of disposable paper and plastic checkout bags by retail establishments within the City of Orange Township 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 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 Municipal of the City of Orange Township, County of Essex, State of New Jersey as follows:

#### **DEFINITIONS**

The following definitions apply to this Ordinance:

(1) The term "customer" means any person purchasing goods or services from a retail establishment.

(2) The term "operator" means 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.

(3) The term "person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

(4) The term "reusable bag" means any bag designed and manufactured to withstand repeated uses over a period of time.

(5) The term "single-use plastic carry-out bag" means 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:

(1) package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items; or

(2) contain or wrap frozen foods, meat, or fish, whether packaged or not; or

(3) contain or wrap flowers, potted plants, or other items where dampness may be an issue; or

(4) contain live animals, such as fish or insects sold in pet stores; or

(5) contain unwrapped prepared foods or bakery goods; or

(6) contain pharmacy prescriptions or medicines; or

(7) 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.

(6) The term "compostable plastic bag" means a checkout bag that:

(a) is capable of undergoing biological decomposition at a specially designed compost site, such that the plastic is not visually distinguishable and breaks down to carbon dioxide, water, inorganic compounds, and biomass, at a rate consistent with known compostable materials (e.g. cellulose) and leaves no toxic residue; and

(b) meets current American Society for Testing & Materials (ASTM) D6400 Standard Specifications for compostability and is labeled with the Biodegradable Product Institute (BPI) logo, and

(c) has the word "Compostable" on the bag in lettering that is readily and easily identifiable.

(7) The term "retail establishment" means 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 City of Orange Township. 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.

### **SINGLE-USE PLASTIC CARRY-OUT BAGS PROHIBITED EFFECTIVE JANUARY 1<sup>ST</sup>**

Effective January 1, 2021, no retail establishment shall provide to any customer, or to any person, 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 product 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 City of Orange Township. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

Effective December 1, 2020, through December 31, 2020, retail establishments may provide to any customer, upon request of the customer, a paper bag without charge.

Effective January 1, 2021, single-use plastic carry-out bags may not be distributed on the City of Orange Township property or at the City of Orange Township-sponsored events.

### **PAPER BAGS SUBJECT TO MANDATORY FEE EFFECTIVE JANUARY 1<sup>ST</sup>**

Effective January 1, 2021, all retail establishments shall make available to customers, upon request by the customer, for a fee of .05 (five cents), 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.

The following bags shall be exempt from the .05 (five cents) fee and are provided by operators inside retail establishments to:

- (1) package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;  
or
- (2) contain unwrapped prepared foods or bakery goods; or
- (3) take home uneaten food that has been served in a restaurant; or

- (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; or
- (5) contain pharmacy prescriptions and medicines; or
- (6) 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.

### **Compostable plastic bags**

Nothing in this ordinance shall prevent any retailer upon prior written notice to the Director of Public Works, from providing compostable plastic bags, free of charge, for the purpose of carrying goods or other materials away from the point of sale, providing the following:

- (1) Compostable plastic bags shall meet current American Society for Testing & Materials (ASTM) D6400 Standard Specifications for compostability and be labeled: (1) With the Biodegradable Product Institute ("BPI") logo as meeting the ASTM standard for compostability and (2) With the word "Compostable" on the bag in lettering that is readily and easily identifiable.
- (2) A retail establishment providing compostable bags shall operate an at-store recycling program so that customers may return the compostable bags. Such a program shall, at a minimum, include at least one (1) accessible and highly visible compostable bag collection box and signs at each register informing customers that compostable bags should be returned to the store and not placed in household recycling or compost piles.
- (3) A retail establishment providing compostable bags shall provide the Director of Public Works with a signed agreement with an authorized compostable recycling facility to accept the compostable bags collected at the retail establishment.
- (4) A retail establishment providing compostable bags must also have reusable bags available to their customers for the purchase or for free.
- (5) A retail establishment providing compostable bags must certify annually to the City of Orange Township that it has complied with the provisions of this ordinance.

### **Promotion and reusable bags**

- (1) 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.

- (2) Each retail establishment shall be strongly encouraged to educate its staff to make an inquiry to a customer whether the customer desires a paper carry-out bag or has supplied his/her own reusable bags before offering the paper carry-out bags to the customer.
- (3) Each retail establishment shall inform customers that if they choose a paper carryout bag they will be charged a fee of .05 (five cents) per paper bag.
- (4) 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.
- (5) Nothing in this Ordinance shall prohibit a retail establishment from providing credit to a customer who has supplied his/her own bags.
- (6) 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 reuses, for a fee of .05 (five cents) or greater.
- (7) The City of Orange Township shall undertake a reusable bag education program that includes:
  - (a) distributing information and free reusable bags as part of a Bring Your Own Bag (BYOB) campaign; and
  - (b) maintaining "Give One Take One" reusable bag collection boxes in municipal and other facilities.

#### **Exempt Customers**

- (1) 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.
- (2) Any customer who states that she or he is aged sixty-five (65) and over shall be provided paper bags without charge. No further identification is necessary.
- (3) Any person who receives food, household items and/or personal care items from a food

pantry or food distribution program shall be provided paper bags without charge.

**Violation and penalty**

- (1) The Director of the Public Works Department, 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 fines.
- (2) The Director of the Public Works Department, on notice to the City of Orange Township Municipal Council, may approve a hardship exemption from the requirements of this ordinance for up to six (6) months from the date of passage, with or without conditions, upon receiving an exemption application by an operator of any retail establishment.
  - (a) The fee for exemption requests shall be \$100.
  - (b) Exemption decisions are effective upon approval and are final, and they are not appealable, except otherwise provided for by law.
- (3) Any retail establishment that 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.
- (4) If a retail establishment has subsequent violations of this Ordinance after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and payable by the operator of the retail establishment:
  - (a) First offense \$50.00.
  - (b) Second offense \$100.00.
  - (c) Third and subsequent offense(s) \$200.00.
- (5) 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.
- (6) The appeal of a written warning notice or fine shall be conducted pursuant to standard municipal regulations and procedures concerning appeals already adopted by the City of Orange Township.

**Effective date**

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

**Purpose**

To encourage the use of reusable bags by customers by reducing the use of disposable paper and plastic non-reusable to check out bags by retail establishments in the City of Orange Township.

**Adopted:**

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**Joyce L. Lanier**  
City Clerk

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**Tency A. Eason**  
Council President

**Approved:**

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**Dwayne D. Warren, Esq.**  
Mayor

**Dated:** \_\_\_\_\_