

LEGAL NOTICE TO BE PUBLISHED WESTPORT NEWS, Friday, September 5, 2008:

At the meeting of the Representative Town Meeting held Tuesday September 2, 2008, the following ordinance was amended as follows:

RESOLVED: That upon the request of four RTM members, an ordinance that bans plastic checkout bags used by retail stores and other organizations selling products to the public is hereby approved. *(Second reading. Full text available from the Town Clerk's Office)*

ARTICLE ____

RETAIL CHECKOUT BAGS

Division 1. In General

§ _____. Purpose

The intent of this ordinance is to improve the environment in Westport by encouraging the use of reusable checkout bags and banning the use of plastic bags for retail checkout of purchased goods. Retail establishments are encouraged to make reusable bags available for sale.

§ _____. Justification

Non-biodegradable plastic bags often are discarded into the environment and end up polluting our waterways, clogging sewers, endangering marine life and causing unsightly litter. These bags last hundreds of years in landfills and are a potential source of harmful chemicals when they do break down.

Division 2. Checkout Bags

§ _____. Definitions

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this section:

- a) *Checkout bag* means a carryout bag that is provided to a customer at the point of sale. The term "checkout bag" does not include plastic produce bags or plastic bags measuring 28" by 36" or larger in size.
- b) *Plastic produce bag* means a flexible container made of very thin plastic material with a single opening that is used to transport produce, meats or other items selected by customers to the point of sale.
- c) *Retail sales* means the transfer to a customer of goods in exchange for payment occurring in retail stores, sidewalk sales, farmers' markets, flea markets and restaurants. The term "retail sales" does not include sales of goods at yard sales, tag sales, other sales by residents at their home, and sales by non-profit organizations.
- d) *Recyclable paper bag* means a paper bag that should have the following characteristics: (1) contains no old growth fiber, (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content, and (3) displays the words "Reusable" and "Recyclable" on the outside of the bag.

- e) *Reusable bag* means a bag with handles that is specifically designed and manufactured for multiple reuse and is (1) made of cloth or other fabric, and/or (2) made of durable plastic that is at least 2.25 mils thick.

§ _____. **Restriction on Checkout Bags**

- A. Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers.
- B. Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.

§ _____. **Operative Date**

This ordinance shall become operative six months following its effective date to allow retail establishments to dispose of their existing inventory of plastic checkout bags and convert to alternative packaging materials.

§ _____. **Notification; Issuance of Citations.**

Upon notification that a violation exists, the Conservation Department will investigate and verify the non-compliance. The Conservation Department is authorized to enforce the ordinance as follows:

A. Notification of Violation.

The Conservation Department shall provide written notice to any person who violates this ordinance. The notice of violation shall state the violation and the date by which said violation shall be remedied. Upon the failure to remedy the violation or commence corrective action to the satisfaction of the Conservation Department within the time specified in the notice, the Conservation Department shall issue a citation as provided for in Subsection B hereof.

Repeat offenders shall be issued additional citations without first receiving a notice of violation. Additional citations shall be issued no more frequently than ninety (90) days following a prior citation.

B. Citation Issuance.

The Conservation Department shall issue a citation when a violation persists beyond the date by which the Conservation Department required that the violation be remedied or beyond the date that corrective action be commenced.

The citation shall state:

- (i) A description of the violation.
- (ii) The initial fine of \$150.00 plus such other penalties, costs and/or fees due for each violation.
- (iii) That after four (4) days from the date of the citation, each day thereafter that the violator has not sent notification of compliance to the Conservation Department shall constitute a separate violation and shall be subject to an additional \$150.00 fine.
- (iv) That the uncontested payment of such fine(s), penalties, costs and/or fees shall be made within (10) days of the date of the citation.
- (v) That such person may contest the liability before a citation hearing officer by delivering in person or by mail within ten (10) days of the date of the citation a written demand for a hearing.
- (vi) That if such a hearing is not demanded, it shall be deemed an admission of liability and an assessment and judgment shall be entered against the person, and that such judgment may issue without further notice.

Any notice of violation or citation issued hereunder shall be sent to the person named in the citation by certified mail, return receipt requested and simultaneously by regular United States Postal Service mail.

Once a written demand for a hearing has been received by the Conservation Department, no additional citations shall be issued for the violation, nor shall daily fines be imposed until after the conclusion of the hearing procedure as set forth in Section _____ hereof.

§ _____. Amount of Fine; Continuing Violations.

- A. The fine for each violation shall be \$150.00, and shall be payable to the Town.
- B. Each occurrence of a violation, and each day that such violation continues, shall constitute a separate violation and shall be subject to a separate fine and may be cited as such.
- C. The person to whom a citation has been issued shall be responsible for reporting, in writing, subsequent compliance to the Conservation Department. Until such time, the fine(s) shall continue to be imposed on a daily basis.

§ _____. Hearing Procedure for Citations.

- A. The First Selectman shall appoint one or more hearing officers, other than any employee of the Town, to conduct the hearings resulting from violations of this ordinance. Any assessment by a hearing officer shall be entered as a judgment against the violator.
- B. A person who chooses to appeal a citation and requests a hearing to this effect shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of the hearing notice, provided the hearing officer shall grant upon good cause shown any reasonable request by an interested party for postponement or continuance. An original or certified copy of the citation issued by the Conservation Department shall be filed and retained by the Town and shall be deemed to be a business record and evidence of the facts contained therein. Upon request of the person appealing the citation, the presence of the Conservation Department employee who issued the citation shall be required at the hearing. A designated Town employee other than the hearing officer may present evidence on behalf of the Town. A person wishing to contest liability shall appear at the hearing and may present evidence. If the person who received the citation fails to appear, the hearing officer may enter an assessment by default upon a finding of proper notice and liability under the ordinance.
- C. The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The hearing officer shall announce his/her decision at the end of the hearing. If the hearing officer determines that the person is not liable, he/she shall dismiss the matter and enter his/her determination, in writing, accordingly. If the hearing officer determines that the person who received the citation is liable for the violation, the hearing officer shall then enter and assess the fines, penalties, costs or fees against the person as provided by this Article.
- D. If such assessment is not paid on the date of its entry, the hearing officer shall send by first class mail a notice of the assessment to the person found liable and shall file, not less than thirty (30) days nor more than twelve (12) months after such

mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court for the geographical area in which the Town is located, together with the applicable entry or filing fee. The certified copy of the notice of assessment shall constitute a record of assessment. Within such twelve-month period, all assessments against the same person may be accrued and filed as one record of assessment. The Clerk shall enter judgment, in the amount of the hearing officer's record of assessment, as well as court costs, against such person in favor of the Town. The hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may be issued without further notice to such person.

- E. A person against whom an assessment has been entered pursuant to this Article is entitled to judicial review by way of appeal in accordance with C.G.S. Section 7-152c(g).

Patricia H. Strauss
Town Clerk