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Borough of Chatham

BOROUGH HALL

54 FAIRMOUNT AVENUE ▪ CHATHAM ▪ NEW JERSEY 07928

ORDINANCE # 19-14

AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM, MORRIS COUNTY, NEW JERSEY CREATING CHAPTER 181, SINGLE USE BAGS AT RETAIL ESTABLISHMENTS, OF THE CODE OF CHATHAM BOROUGH

WHEREAS, the Borough finds that it is in the best interest of the Borough to regulate the use of single-use plastic bags and paper bags by retail establishments and promote the use of reusable bags within the Borough;

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM, IN THE COUNTY OF MORRIS, NEW JERSEY AS FOLLOWS:

SECTION 1. Chapter 181, SINGLE USE BAGS AT RETAIL ESTABLISHMENTS, is hereby created and added in its entirety to the Code of the Borough of Chatham as follows:

§ 181-1. 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

A durable carryout bag with stitched handles for reinforcement made from any natural or synthetic material other than plastic film including, but not necessarily limited to, woven or nonwoven plastic or cloth, that is at least 10 mils thick, and that is specifically designed and manufactured for multiple reuse, and that is washable or is made from a material that can be cleaned or disinfected regularly.

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:
 - 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 live animals, such as fish or insects sold in pet stores;
 - 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.

RETAIL ESTABLISHMENT

Any establishment that conducts retail trade as defined in Chatham Code Section 165.10.

§ 181-2. Single-use plastic carry-out bags prohibited effective March 1, 2020.

Effective March 1, 2020, no retail establishment shall provide any single-use plastic carryout bags, as defined in §181-1, above, to any customer at the point of sale. 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 March 1, 2020, single-use plastic carry-out bags may not be distributed on Borough property or at Borough-sponsored events.

§ 181-3. Paper bags subject to Mandatory Fee Effective March 1, 2020.

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.

The following bags shall be exempt from the \$.10 (ten cents) fee and are provided by operators inside retail establishments to:

- A. package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
- B. contain unwrapped prepared foods or bakery goods;
- C. take home uneaten food that has been served in a restaurant;
- D. 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; contain pharmacy prescriptions and medicinal products; or
- E. 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.

§ 181-4. 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 make 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.
- 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 shall prohibit 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 as defined in this ordinance.
- G. The Borough of Chatham 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.

§ 181-5. 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 or reusable 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.

§ 181-6. Enforcement and Violation Penalty

A. The Chatham Borough Police Department shall have the responsibility for enforcement of this Ordinance. The Borough Administrator may designate additional Borough officers, employees or agencies as he deems necessary to enforce this Ordinance. No such designation shall take effect until it is filed with the Borough Clerk.

B. Any retail establishment that violates or fails to comply with any of the requirements of this Ordinance after an initial written warning notice shall be liable for same.

C. 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 shall be payable by the operator of the retail establishment upon a plea of guilty entered pursuant to the adopted Local Violations Schedule or after trial and conviction in municipal court:

1. \$100.00 for the first violation after the first written warning notice is given;
2. \$200.00 for the second violation after the written warning notice is given; and
3. \$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.

SECTION 2. Nothing in this Ordinance is intended to create any requirement, power or duty that conflicts with any federal or state law.

SECTION 3. All ordinances or parts of ordinances of the Borough of Chatham

heretofore adopted that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of such 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 4. 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 as a whole or in part; it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. This Ordinance shall take effect immediately after passage and publication as provided by law.

SECTION 6. This Ordinance shall be a part of the Code of the Borough of Chatham as though codified and fully set forth therein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Code.