



Kearny Town Council

402 Kearny Avenue
Kearny, NJ 07032

www.kearnynj.org

FIRST READING -	2-4-20
PUBLISH -	2-10-20
SECOND READING -	2-18-20
PUBLISH -	2-24-20
PLAN BD REVIEW -	

ORDINANCE 2020-7

An Ordinance Prohibiting the Retail Use of Plastic Single Use Carry Out Bags

WHEREAS, single use carry out bags create significant litter problems in Kearny's neighborhoods, sewer systems and waterways; and

WHEREAS, the use of single use carry out bags and their typical disposal creates an impediment to achievement of Kearny's environmental goals; and

WHEREAS, the production and disposal of single use carry out bags has significant environmental impacts, including the effects plastic production has on climate change (via greenhouse gases), ocean pollution and increased landfill waste; and

WHEREAS, of all single-use carryout bags, plastic carryout bags have the greatest impacts on litter and marine life; and

WHEREAS, the reduction in the use of single use carry out bags helps to protect the environment by reducing greenhouse gasses, keeping waterways clean and reduce landfill waste; and

WHEREAS, studies document that banning single use plastic bags will increase customers' use of reusable bags, thereby reducing plastic bag use; and

WHEREAS, the Town Council finds that the reduction of single use plastic bags by Retail Establishments in the Town of Kearny is a public benefit; and

WHEREAS, the Town Council desires to reduce the number of plastic single use carry out bags that are being used, discarded and littered to promote the use of reusable carryout bags and recyclable paper bags by Retail Establishments located within the Town of Kearny.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Kearny, Hudson County, New Jersey as follows:

Section 1. That the Revised General Ordinances of the Town of Kearny is hereby amended and supplemented by the creation of a new Section 29-4 entitled "Prohibition of retail use of plastic single use carry out bags".

29-4 PROHIBITION OF RETAIL USE OF PLASTIC SINGLE USE CARRY OUT BAGS

29-4.1 DEFINITIONS

CARRY OUT BAG shall mean a bag provided by a Retail Establishment to a customer at the point of sale for customers, but shall not include:

- Bags, whether plastic or not, in which loose produce or products are placed by a customer to deliver such items to the point of sale or check out of a Retail Establishment, such as fruit, vegetables, nuts, grains, candy, cookies or small hardware items;
- Laundry or dry cleaning bags;
- Newspaper bags;
- Bags used to contain or wrap frozen food, meat, fish or other items, whether prepackaged or not, to prevent or contain moisture and cross contamination with other food products;
- Bags provided by pharmacists to contain prescription drugs;
- Bags sold in packages containing multiple bags intended for use as garbage, pest waste or yard waste bags;
- To contain or wrap flowers and potted plants; and
- Contain items where damage to a good or contamination of other goods placed together in the same bag would result.

PLASTIC SINGLE USE CARRY OUT BAG shall mean a bag made of plastic which is not a reusable bag.

RETAIL ESTABLISHMENT shall mean any commercial enterprise, whether or not operated for profit, including but not limited to, mercantile establishments, department stores, food service establishments, restaurants, pharmacies, convenience and grocery stores, liquor stores, supermarkets, clothing stores, seasonal and/or temporary businesses, jewelry stores, and stores which sell household goods or any other commercial establishment not specifically identified herein utilizing plastic single use plastic carryout bags for the convenience of merchandise, but excluding bazaars, fairs, carnivals or other special events operated by a nonprofit or religious institution. Flea markets (as defined in Town Code Section 4-26) are included in this definition of a Retail Establishment and are subject to this Ordinance.

REUSABLE CARRYOUT BAG shall mean a bag with handles specifically designed and manufactured for multiple reuse and is either made from polyester, polypropylene, cotton or other durable material or plastic which is at least 2.25 mils in thickness and meets the following criteria:

- Has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet; and
- Is capable of being washed so as to be cleaned and disinfected multiple times.

RECYCLABLE PAPER BAG shall mean a paper bag that is 100% recyclable and contains at least 40% post-consumer recycled content and displays the words "Recyclable" and "made from

40% post-consumer recycled content” in a visible manner on the outside of the bag.

29-4.2 USE OF REUSABLE CARRYOUT BAGS IS MANDATORY

All Retail Establishments shall provide customers with only reusable carryout bags and/or recyclable paper bags. No Retail Establishment shall provide any plastic single use carryout bag to a customer at the checkout stand, cash register, point of sale, or other point of departure for the purpose of transporting products or goods out of the business or store, except as otherwise stated in this section.

Nothing in this section shall be read to preclude Retail Establishments from making reusable carryout bags available for sale to customers or from customers using their own reusable carryout bags.

29-4.3 CARRYOUT BAG CHARGE

No Retail Establishment shall provide a reusable carryout bag to a customer at the point of sale, unless the store charges the customer a reusable carryout bag charge of at least ten cents (\$0.10) per bag. The carryout bag charge shall not apply to recyclable paper bags as defined herein.

No Retail Establishment shall be required to charge its customers a carryout bag charge for bags that fall outside the definition of a reusable carryout bag.

29-4.4 EXCEPTIONS FOR CARRYOUT BAG CHARGE

A Retail Establishment shall not charge the carryout bag charge required under section 29-4.3 when providing a reusable carryout bag to a customer who participates in, or is a beneficiary of, any United States government federal welfare program, or any local or Hudson 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).

29-4.5 EXEMPTIONS

The Mayor and Council may approve a request for an exemption or deferral from the requirements of this section by any operator of a Retail Establishment, with or without conditions, upon a showing of substantial hardship or other good cause. Exemptions or deferrals should be granted only for the minimum time necessary to accommodate the reason for the request.

29-4.6 ENFORCEMENT

Any notice of violation issued pursuant to this Section shall be returnable to the Kearny Municipal Court, which shall have the power to impose penalties as provided herein. The Kearny Health Department shall be designated as the appropriate department and/or staff to enforce this Section.

29-4.7 PENALTIES

Any operator of a Retail Establishment convicted of a violation of this section, upon conviction, shall be liable for the following penalties:

- 1st incursion: written warning by Health Dept.
- 2nd incursion: \$100 penalty per instance
- 3rd incursion: \$250 penalty per instance
- 4th incursion: \$500 penalty per instance

29-4.8 OUTREACH AND IMPLEMENTATION

The Town of Kearny's Advisory Committee on the Environmental and Sustainability (ACES) established by Section 2-48 of the Town Code shall coordinate outreach with the Town of Kearny (in conjunction with Kearny Urban Enterprise Zone (UEZ) officials) to Retail Establishments by providing information to educate retail establishment employees, customers and the general public as to the requirements of this Section 29-4.

29-4.9 EFFECTIVE DATE

This ordinance shall not become effective until April 22, 2021 to allow Retail Establishments sufficient time to plan and implement the transition to Reusable Carry Out Bags and/or Recyclable Paper Bags.

29-4.10 SEVERABILITY CLAUSE

The provision of this ordinance are declared 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 law, such decision shall not affect the validity of the remaining sections, subsections, clauses and phrases of this ordinance, but shall remain in effect; it being the legislative intent that this ordinance shall stand notwithstanding the validity of any part thereof.

Section 2. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

HISTORY:

02/04/20

Next: 02/18/20

Council

INTRODUCED

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Susan McCurrie, Council Member
SECONDER:	Gerald Ficeto, Council Member
AYES:	Doyle, McCurrie, Eckel, Cardoso, Konopka, DeCastro, Santana, Ficeto, Santos

I certify that the foregoing ordinance was introduced by the Council on first reading on February 4, 2020, duly published according to law, and passed on second reading and final passage on February 18, 2020.


PATRICIA CARPENTER, TOWN CLERK

I hereby approve the foregoing ordinance this 18th day of February 2020.


ALBERTO SANTOS, MAYOR

James Bruno

FEB 25. 2020
Departments