

ORDINANCE

19-71

1st Reading NOV 15 2019
Public Hearing DEC 05 2019
2nd Reading & Passage DEC 05 2019
Withdrawn _____ Lost _____

No. _____
Date to Mayor DEC 12 2019
Date Returned DEC 12 2019
Date Resubmitted to Council _____

Approved as to Form and Legality

Factual content certified by

CITY ATTORNEY

TITLE

Councilman /woman Santiago Rodriguez, Marge Caldwell-Wilson presents the following Ordinance:

AN ORDINANCE ESTABLISHING THE BANISHMENT OF SINGLE USE PLASTIC BAGS IN THE CITY OF TRENTON TO PRESERVE AND ENHANCE OUR CITY AND ENVIRONMENT

WHEREAS, On average, one person uses 500 single-use disposable plastic bags per year, 4 billion single-use shopping bags are used annually in New Jersey, and 102 billion are used nationwide; and,

WHEREAS, approximately less than 1% of plastic bags are recycled. Most plastic bags are made from polyethylene which takes centuries to degrade. Each ton of recycled plastic bags saves the energy equivalent of 11 barrels of oil; and,

WHEREAS, Trenton desires to reduce the use of single-use plastic bags by all residents and merchants because reusable bags consume far less energy and natural resources than single use plastic carry-out bags and recyclable paper carry-out bags, when used as intended; and,

WHEREAS, pursuant to 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." Regulating the retail use of plastic bags will preserve the current and future public health, safety, and welfare by protecting natural resources and encouraging environmental sustainability; and

NOW THEREFORE BE IT ORDAINED, no retail establishment shall provide to any customer a single use plastic carry-out bag, as defined in the Definitions section at the end of this Ordinance. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to: (a) product bags; or (b) or to produce bags used to carry 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 Trenton. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

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Fees for Compliant Bags; Use of Reusable Bags Encouraged.

- A. All retail establishments shall make available to customers compliant bags, as defined herein, for the purpose of carrying goods or other materials away from the point of sale; and may charge a fee of \$.10 for such bags.
- B. 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.
- C. All retail establishments must provide customers with compliant bags, upon request, if customers fail to bring their own bags, in accordance with the fee structure set forth in this section.
- D. A retail establishment may choose, in its discretion, to provide a credit to customers that choose to bring in their own bags.
- E. 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 recyclable paper carry-out bags.
- F. A retail establishment is strongly encouraged to educate on plastic bag and plastic bag and plastic film recycling and offer a take back program.

Enforcement and Penalties.

- A. The health officer or inspector have authority to enforce this Ordinance, including, but not limited to, investigating violations, inspecting any retail establishment or retail food vendor's premises to verify compliance, and issuing fines.
- B. Any retail establishment or retail food vendor 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 a subsequent infraction.
- C. If a retail establishment or retail food vendor 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 shall be payable by the operator of the retail establishment or retail food vendor:
 - (1) a fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
 - (2) a fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or
 - (3) a fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.
- D. A fine shall be imposed for each day a violation occurs or continues.

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Effective Date, Ramp-Up Period, and Guidance to Businesses.

- A. This Ordinance shall take effect December 31, 2020.
- B. The period from passage and publication to effective date shall be known as the “ramp-up period”. During the ramp-up period, City Officials shall prepare and provide informational materials to aid the public and businesses in preparing to comply with this Ordinance.

Construction of this Ordinance.

- A. Nothing in this Ordinance is intended to create any requirement, power, or duty that is in conflict with any federal or state law and shall not be construed as such.
- B. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are repealed, but only to the extent of such conflict or inconsistency.
- C. The provisions of this Ordinance are severable; 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, but shall remain in effect.

Definitions.

- A. The term “customer” means any person purchasing goods or services.
- B. The term “person” means any natural person, firm, corporation, partnership, trust, joint stock company, association, or other organization or group however organized.
- C. The term “single use carry-out bag” means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or plant sources, that is provided by an operator of a retail establishment or retail food vendor to a customer at the point of sale. The term includes compostable and biodegradable bags but specifically exempts the following from the category of “Single Use Plastic Carry-out Bags”: reusable bags, produce bags, and product bags.
- D. The term “reusable bag” means any sewn bag made of cloth or other washable fabric with stitched handles that are specifically designed and manufactured for multiple reuse and meets all of the following additional requirements:
 - (1) it is machine-washable or is made from a material that can be cleaned or disinfected;
 - (2) it does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations; and
 - (3) it is affixed with a statement that the bag is a reusable bag, as well as recycling instructions if the bag is recyclable.

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- E. The term “produce bag” or “product bag” means a very thin bag without handles used exclusively to carry produce, meats, or other items to the point of sale inside a retail establishment or, for reasons of public health and safety, to prevent such items from coming into direct contact with other purchased items:

(1) “produce bags” are bags to:

- package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
- contain or wrap frozen foods, meat, or fish, whether packaged or not;
- contain or wrap flowers, potted plants, or other items where dampness may be an issue; contain unwrapped prepared foods or bakery goods; or
- pharmacy prescription bags.

(2) “product bags” are newspaper bags, 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.

- F. 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 and/or doing business within the geographical limits of Trenton. Retail establishments include: a business establishment that generates a sales or use-tax; a drug store, pharmacy, supermarket, grocery store, convenience food store, food mall, 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 a business establishment that sells clothing, a hardware store, or any other non-perishable goods, “Retail establishment” does not include non-profit charitable re-users as defined in Section 501(c)(3) of the Internal Revenue Code, or a distinct operating unit or division of the charitable organization that reuses and recycles donate goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

INTRODUCTION				ADOPTION				INTRODUCTION				ADOPTION				INTRODUCTION				ADOPTION			
AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB	AYE	NAY	NV	AB
BLAKELEY	✓							MUSCHAL	✓							MCBRIDE			✓	✓			
CALDWELL WILSON				✓	✓			RODRIGUEZ	✓			✓											
HARRISON	✓			✓				VAUGHN	✓			✓											
NV - NO VOTE				AB - ABSENT																			

Adopted on first reading at a meeting of the City Council of the City of Trenton, NJ on

NOV 15 2019

Adopted on second reading after the public hearing on

DEC 05 2019

Mayor

APPROVED
REJECTED

Reconsidered by Council - Override Vote

AYE
NAY

President of Council

City Clerk