

TOWN OF HAMDEN
FEBRUARY 14, 2019

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**TOWN OF HAMDEN
REC'D AND FILED BY LEGISLATIVE COUNCIL
ORDINANCES AMENDING TITLE XI: BUSINESS REGULATION OF THE
CODE OF ORDINANCES AND ADOPTING CHAPTER 126: REGULATION OF
CERTAIN PLASTIC BAGS**

Presented by: Brad Macdowall, Legislative Council 9th District

WHEREAS, the purpose of this ordinance is to reduce bag waste to protect the environment in the Town of Hamden for the benefit and welfare of its residents by encouraging the use of Reusable Checkout Bags and by prohibiting the provision of all Plastic Checkout Bags at the time of checkout.

NOW THEREFORE BE IT ORDAINED that the Town of Hamden hereby amends Title XI: Business Regulations of the Code of Ordinances and adopts Chapter 126: Regulation of Certain Plastic Bags as set forth below.

Chapter 126: Regulation of Certain Plastic Bags

Section 126.01. Purpose

The purpose of this ordinance is to reduce bag waste to protect the environment in the Town of Hamden for the benefit and welfare of its residents by encouraging the use of Reusable Checkout Bags and by prohibiting the provision of all Plastic Checkout Bags at the time of checkout.

Section 126.02. Definitions.

For purposes of this ordinance the following terms, phrases and words shall have the meanings given here, unless clearly indicated by the context.

Business Establishment means any person, business or non-profit entity that sells or provides merchandise, goods or materials including, without limitation, clothing, food or personal items of any kind, directly to a consumer, and includes, by way of example and not limitation, any grocery store, grocery delivery service, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, hospital, library, school, including temporary vendors at farmers markets, street fairs and school or Town sponsored events and facilities.

Checkout Bag means a carryout bag that is provided to a customer at the point of sale. Checkout Bag excludes a Product Bag.

Recycled Paper Checkout Bag means a bag that contains no old growth fiber and a minimum of 40% post-consumer recycled content, is 100% recyclable, and has printed in a highly visible manner on the bag the word "Reusable" and "Recyclable," the name and location of the manufacturer and the percentage of post-consumer recycled content.

Product Bag means a single use plastic bag made of any plastic type material or paper non-checkout bag to include but not be limited to bags that are used by consumers inside stores to: package wet or bulk items such as fruit, vegetable, mushrooms, nuts, grains, candy; contain or wrap foods, meat, or fish whether packaged or not, all of which typically lack handles; contain or wrap flowers, potted plants or other items where dampness may be a problem; contain unwrapped prepared foods, bakery goods; contain dry cleaning and clothes cleaner bags; contain pharmacy prescriptions; or safeguard public health during the transportation of hospital waste.

Reusable Checkout Bag means a bag that is designed and manufactured for multiple reuses and is made of cloth or other fabric. A reusable checkout bag may be recyclable or compostable and is specifically designed and manufactured for multiple reuses.

Plastic Checkout Bag means a bag of any thickness or size that is made of plastic derived from fossil fuels or from a genetically modified organism bio-based source (such as corn or other plant sources), which is provided at checkout to transport items purchased from or provided by a Business Establishment. A Plastic Checkout Bag excludes a Product Bag.

Section 126.03. Prohibition.

A. Distribution of Plastic Checkout Bags.

No Business Establishment in the Town of Hamden shall provide as a courtesy or sell a Plastic Checkout Bag to any patron or customer.

B. Distribution of Paper Checkout Bags.

No Business Establishment shall provide as a courtesy or sell paper checkout bags that do not meet or exceed the specifications of a Recycled Paper Checkout Bag as defined above.

C. Acceptable Checkout Bags.

1. A Business Establishment may provide as a courtesy to customers a Recycled Paper Checkout Bag.
2. Nothing in this Ordinance shall prohibit a Business Establishment from encouraging and providing incentives for the use of Reusable Checkout Bags. A Business Establishment may use credits or rebates for customers that bring their own Checkout Bags for the purpose of carrying away goods.

126.04. Violations, Penalties and Enforcement.

It shall be the duty of the Litter Enforcement Officer (Enforcement Officer) or his/her designee to enforce the provisions of Chapter 126 and any rules or regulations promulgated under this Chapter. The Enforcement Officer may order any person or business that violates this Chapter to abate such violation and shall

be hereby authorized and empowered to issue citations for violations of this Chapter.

Violation of any of the requirements of this Ordinance shall be subject to the penalties set forth in this section.

- A. If the Enforcement Officer or his/her designee determines that a violation of these Ordinances has occurred, the Enforcement Officer or his/her designee shall issue a written warning to the Business Establishment for the initial violation.
- B. If the Enforcement Officer or his/her designee determines that an additional violation of this Ordinance has occurred after a written warning notice has been issued for an initial violation, the Enforcement Officer or his/her designee shall issue a Notice of Violation against the Business Establishment. The Notice shall be sent to the Business Establishment's last known address by certified mail, return receipt requested and by regular mail. Such notice shall direct the removal, correction or abatement of the violation within 30 calendar days after receipt of written notice and notify the Business Establishment that failure to remove or correct the violation shall result in the issuance of a citation and the fines and penalties imposed.
- C. If the Enforcement Officer or his/her designee determines that an additional violation of this Ordinance has occurred after the Notice of Violation has been issued, the Enforcement Officer or his/her designee shall issue a Citation to the Business Establishment's last known address by certified mail, return receipt requested and by regular mail. Such citation shall inform the owner of the allegations and the amount of the fines, penalties, fees and costs due and that the Business Establishment may contest its liability before a citation hearing officer.
- D. For each violation that occurs after the issuance of the written warning notice for an initial violation, the fine imposed by the Enforcement Officer of his/her designee shall be as follows:
 - (1) One hundred fifty dollars (\$150) for the second violation;
 - (2) Two Hundred fifty dollars (\$250) for the third violation and each subsequent violation.
 - (3) Appeals may be made pursuant to Title I: Chapter 12: Hearing Procedure for Municipal Citations of the Town of Hamden Code of Ordinances.

Section 126.05. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or

unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered. To further this end, the provisions of this ordinance are hereby declared to be severable. In the event of any conflict between this chapter and any other local rules, regulation or ordinances, the provisions of this chapter shall govern.

Section 126.06. Effective Date.

This Ordinance shall become operative six (6) months following its effective date to allow Business Establishments to dispose of their existing inventory of Plastic Checkout Bags and replace them with Checkout Bags that comply with this Ordinance. If at the effective date of this Ordinance any Business Establishment has any Plastic Checkout Bags remaining, the Business Establishment shall be permitted to provide such remaining bags to patrons and customers, provided that the Business Establishment is able to clearly provide to the Enforcement Officer evidence of proof of purchase that is a date prior to adoption of this Ordinance.

Section 126.07. Hardship deferments.

- A. Upon written application, the Enforcement Officer of his/her designee may defer application of this section for a six-month period after the effective date stated in Subsection 126.06 upon a showing of hardship. Hardship will be found when:
- (1) Compliance with any subsection of this section would cause significant economic difficulty;
 - (2) There is no readily available compliant substitute; or
 - (3) Application of this ordinance would deprive the applicant of a legally protected right.
- B. Any entity granted a deferment by the Enforcement Officer or his/her designee must reapply prior to the end of the six-month exemption period and demonstrate continued undue hardship if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed six months.
- C. A deferment granted in accordance with this subsection may be extended for no more than two additional six-month periods, upon written application to the Enforcement Officer or his/her designee at least two months prior to the expiration of the prior deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

- D. For any further extension beyond the maximum deferment period, the applicant must apply for a variance to the Legislative Council and demonstrate that there is no readily available substitute and why any such substitute is not capable of being used by the applicant. The applicant must continue to apply every six months in accordance with this subsection unless a different time frame is established by the Council upon approval of the application.

- E. A deferment application shall include all information necessary for the Enforcement Officer of his/her designee to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Enforcement Officer or his/her designee may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.

- F. The Enforcement Officer of his/her designee may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the environment and public health and further the interests of this section.

- G. Deferment decisions are effective immediately and final.

Adopted by the Legislative Council at its meeting held on _____, 2019.

APPROVED AS TO FORM:

 Susan Gruen
 Town Attorney

 Michael McGarry, President
 Legislative Council

 Kim Renta, Clerk
 Legislative Council

APPROVED:

 Mayor Curt Balzano Leng

Date: _____
 Ordinance No:
 Published:
 Effective Date: