

Article 26

To see if the Town will vote to amend the General By-law as follows:

Add the following chapter.

CHAPTER 126 – PROHIBITED ACTIVITIES

ARTICLE I – Single-Use Plastic Bag

126-1. Purpose and Intent:

The production, use and disposition of single-use plastic bags, as defined herein, has significant impacts on the marine and terrestrial environment of all coastal communities, including but not limited to:

- A. Contributing to the injury and even death of marine and terrestrial animals through ingestion and entanglement;
 - B. Contributing to pollution and degradation of the terrestrial and coastal environment;
 - C. Clogging our storm drainage systems;
 - D. Creating mechanical and disposal burdens for solid waste collection and recycling facilities; and
 - E. Requiring the use of millions of barrels of non-renewable, polluting, fossil fuel nationally for their manufacture.
1. Studies have shown that even those plastic bags made from “biodegradable,” “compostable” or “oxo-biodegradable” materials, which all require very specific and controlled environments to fulfill their claims, are for all intents and purposes identical to single-use high or low-density polyethylene plastic bags in their potential impacts to the environment as set forth above. Bags of these types are therefore also subject to the requirements herein.
 2. The goal of this By-law is to join neighboring towns on Cape Cod in protecting, conserving and enhancing our unique natural beauty and irreplaceable natural resources by phasing out, within the retail sector, the use of certain single-use plastic bags, as defined herein, and by encouraging the use of reusable bags within the retail and municipal sectors. Therefore, the Town of Mashpee seeks to phase out the use of single use plastic bags by December 31, 2017.

126-2. Definitions:

Carryout Bag - Any bag that is provided at the point of sale to a customer by an establishment for use to transport or carry away purchases, such as merchandise, goods or food, except as otherwise exempted under §126-3B.

Customer - Any person purchasing goods, articles, food or personal services from an establishment.

Enforcing Person - Those persons listed in §126-6, namely any police officer or agent of the Board of Health: non-criminal enforcement of ordinances, rules and regulations, of the General Ordinances of the Code of the Town of Mashpee, as further delegated by the time of taking effect pursuant to §126-5.

Establishment - Any business selling goods, articles, food or personal services to the public, including but not limited to markets, merchandise retailers, food purveyors, public eating establishments and take-out restaurants.

Operator - The person in control of, or having the responsibility for, the operation of an establishment, which may include, but is not limited to, the owner.

Person - Any natural person, firm, corporation, partnership, or other organization or group however organized.

Product Bag - A bag integrated into the packaging of the product.

Reusable Bag - A bag with handles specifically designed for multiple reuse; and is either:

1. Made of cloth or other machine washable fabric; or
2. Made of durable, non-toxic plastic generally considered a food-grade material that is more than 4 milliliters thick.

Single Use Plastic Bag - For the purposes of this By-law is defined as a bag made of plastic, including but not limited to bags made of any and all grades of polyethylene, polyethylene terephthalate, polyvinyl chloride, polypropylene, nylon, "biodegradable," "compostable" or "oxo-biodegradable" materials, with a thickness of less than 4.0 milliliters provided at the checkout stand, cash register, point of sale or other point of departure and that are intended for the purpose of transporting food or merchandise out of the Establishment. Single-use plastic bags **do not include** plastic bags provided to the customer, which are a maximum of 11 inches by 17 inches and are without handles, listed below:

1. To transport produce, bulk food, candy or meat from a department within a store to the point of sale;
2. To hold prescription medication dispensed from a pharmacy;
3. To segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a point-of-sale bag;
4. To distribute newspapers; or
5. To protect clothing in dry-cleaning establishments.

126-3 Use and Regulation:

- A. Single-use plastic carryout bags shall not be sold, provided, or distributed to a customer or any other person by any person, owner, or operator of any establishment within the Town of Mashpee. Existing stock of single-use bags shall be phased out within **twelve (12)** months of adoption of this article; any remaining stock shall be disposed of properly by the establishment.

B. Exemptions and Alternatives:

1. The following are exempt and not subject to the provisions of this chapter. These types of bags are in addition to the 5 types of bags that are not single use plastic bags as defined in Section 2.

(1) Bags used by customers inside establishments to:

(a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;

(b) contain or wrap frozen foods, meat, or fish, whether packaged or not; or

(c) contain or wrap flowers, potted plants, newspapers, or other items where dampness may be a problem;

2. Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage, waste, pet waste or yard waste.

3. Product bags.

C. Nothing in this chapter prohibits customers from using bags of any type that they bring to the grocery store, food provider, or other establishment themselves or from carrying away goods that are not placed in a bag. Customers are encouraged to bring their own reusable bags to the aforesaid establishments.

D. Establishments may and are strongly encouraged to distribute paper bags, reusable bags and boxes available to customers with or without charge and educate their staff to promote reusable bags and post signs encouraging customers to use washable reusable bags.

E. The Town Manager or designee may prior to the effective date of this ordinance engage in any outreach process to establishments concerning this ordinance and exempt an establishment from the requirements of §126-3A for a period of not more than one year upon the establishment's showing, in writing, that this By-law would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing and the Town Manager's decision shall be final.

126-4 Reusable Bag Policy:

Notwithstanding the provisions of §126-3B, an establishment shall provide a reusable bag at no cost upon the request of a customer who uses a voucher issued under the Special Supplemental Food Program for Women, Infant and Children (WIC) pursuant to M.G.L. c. 111. Customers are encouraged to bring their own reusable shopping bags to stores. Establishments may provide reusable bags at no charge, or charge a reasonable fee for each paper or other bag, as they desire.

Establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

126-5 Time to Take Effect:

In addition to the exemption provided in §126-3B, in order to further assist existing establishments in complying with this ordinance by phasing out the use of single-use plastic carryout bags over a period of 12 months from the effective date this ordinance, this ordinance shall take effect after 12 months from the date of its adoption.

126-6 Inspection and Enforcement:

Any enforcing person shall have the right to enter any establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter. Upon finding a violation of this chapter an enforcing person shall issue a written warning notice to the operator of the establishment that a violation has occurred and the potential penalties that will apply for future violations. This article may be enforced by any Town police officer or agents of the Board of Health. This article may be enforced through any lawful means in law or in equity, including, but not limited to, noncriminal disposition pursuant to MGL c. 40, §21D and appropriate chapter of the Town's General By-laws.

126-7 Violations and Penalties:

Any establishment that violates or fails to comply with this chapter shall be subject to the following penalties to be enforced in law or equity by any means, including without limitation noncriminal disposition pursuant to G. L. c. 40 § 21D, provided that no more than one (1) penalty after written warning shall be imposed upon an establishment within a seven (7) day calendar day period: First Offense: \$50.00 fine. Second Offense: \$100.00 fine. Third and Subsequent Offense: \$200.00 and the Town may in its discretion publish the fine on its web site after the third and subsequent offense.

126-8 Severability:

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.

Submitted by Environmental Oversight Committee

Explanation: The production, use and disposition of single-use plastic bags, including bags made of high-density polyethylene, low-density polyethylene, "biodegradable," "compostable" or "oxo-biodegradable" materials, have significant impacts on the marine and terrestrial environment of all coastal communities, including but not limited to:

- 1) Contributing to the injury and even death of marine and terrestrial animals through ingestion and entanglement;
- 2) Contributing to pollution and degradation of the terrestrial and coastal environment;
- 3) Clogging our storm drainage systems;
- 4) Creating mechanical and disposal burdens for solid waste collection and recycling facilities; and
- 5) Requiring the use of millions of barrels of non-renewable, polluting, fossil fuel nationally for their manufacture.

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The Board of Selectmen recommends Town Meeting approval by a vote of 5-0
The Finance Committee recommends Town Meeting approval by a vote of 5-1