

**LOCAL LAW NO.   4   OF 2020**

**TOWN BOARD**

**TOWN OF NEW CASTLE**

**PROPOSED LOCAL LAW TO AMEND CHAPTER 54 OF THE CODE OF THE TOWN OF  
NEW CASTLE**

A LOCAL LAW to amend  
Chapter 54 of the Code of the  
Town of New Castle plastic  
carryout bags.

**BE IT ENACTED** by the Town Board of the Town of New Castle as follows:

Section 1. Chapter 54 of the Code of the Town of New Castle entitled “Carryout Bags” is hereby created as follows:

§ 54-1 **Purpose and intent.**

- A. In February 2008, the Town of New Castle became the first municipality in the State of New York to adopt the New York State Department of Environmental Conservation's "Climate Smart Communities" pledge, a ten-measure commitment to encourage renewable energy, to increase recycling efforts, and to incorporate climate change sustainability, and the use of environmentally sound goods and services within all development plans. In April 2011 the Town Board adopted a Climate Action Plan.
- B. In accordance with the goals and objectives of the Climate Smart Communities Pledge and the Town's Climate Action Plan, the Town Board seeks to conserve resources, reduce greenhouse gas (GHG) emissions, waste, litter and pollution. An important part of that goal is to procure and use sustainable products and services.
- C. The Town Board finds that the use of single-use carryout bags (plastic, paper, and biodegradable) has negative environmental impacts, including GHG emissions, litter, water consumption, solid waste generation and effects on wildlife and that numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains and fouling beaches.  
single-use plastic bags do not biodegrade but instead

break down into smaller pieces that are ingested by marine animals and make their way into the food chain. Furthermore, the manufacturing, transport, recycling and/or disposal of paper bags require significant environmental resources.

- D. The Town Board believes that, from an overall environmental and economic perspective, a shift to reusable bags is a better alternative to the continued use of single-use plastic and paper carryout bags. Similar policies adopted in other jurisdictions have resulted in significant reductions in the use of single-use carryout bags. The Town Board finds that such a shift in use shall be a benefit to the overall health, safety and welfare of the Town of New Castle, its residents and the local environment.
- E. The Town Board also finds that a carryout bag fee is an essential element of the movement away from single-use carryout bags because it will discourage customers from using single-use carryout bags when shopping at regulated stores and will encourage a shift towards the use of reusable bags. Any costs incurred by applicable businesses, as defined herein, in providing paper bags and reusable bags will be at least partially offset by the monetary proceeds from the carryout bag fee. Furthermore, such fee is not a tax because the monetary proceeds will be retained by the retail establishments and this chapter shall not specify how the retailers must expend the monies collected.
- F. Effective March 1, 2020, the State of New York enacted the New York State Bag Waste Reduction Act. The law prohibits the distribution of plastic carryout bags by retailers in New York State, subject to certain exemptions. Jurisdiction in all matters pertaining to plastic carryout bags is vested exclusively in the State.
- G. The purpose of this chapter, as amended, is to further incentivize the use of reusable carryout bags and incorporate the provisions of the New York State Bag Waste Reduction Act into the laws of the Town of New Castle.

#### § 54-2 **Definitions.**

For purposes of this chapter, the following definitions shall apply:

#### **APPLICABLE BUSINESS**

- A. Any of the following retail establishments located within the Town of New Castle:
  - (1) A full-line, self-service retail store with gross annual sales of \$2,000,000 or more that sells a line of dry grocery, canned goods, or nonfood items and some perishable items.
  - (2) A drug store, pharmacy, supermarket, grocery store, convenience food store, farmer's market vendor, food mart, food market, minimart or gasoline station store.
- B. "Applicable business" does not include a restaurant, deli or any other business that receives 90% or more of its revenue from the sale of prepared food to be eaten on or off its premises.

#### **CARRYOUT BAG COST PASS-THROUGH**

The cost which must be collected by an applicable business from their customers when providing a reusable bag or recycled paper bag.

## **EXEMPT BAG**

- A. A bag used solely to contain or wrap uncooked meat, fish, seafood, poultry, other unwrapped or non-prepackaged food, flower, plant, or other item for the purpose of separating it from other items to avoid contamination, prevent damage from moisture, or for sanitary, public health, or environmental protection purposes;
- B. A bag used solely to package items from bulk containers, including fruits, vegetables, grains, candy, small hardware items (such as nuts, bolts, and screws), live insects, fish, crustaceans, mollusks, or other aquatic items requiring a waterproof bag;
- C. A bag used solely to contain food sliced or prepared to order;
- D. A bag used solely to contain a newspaper for delivery to a subscriber of such newspaper;
- E. A bag sold in bulk quantities to a consumer at the point of sale that were specifically prepackaged in a manner to allow for bulk sale (for example, quantities of bags prepackaged in individual presealed boxes) or prepackaged in individual boxes or containers for sale to a customer;
- F. A bag sold as a trash bag;
- G. A bag sold as a food storage bag, such as those in snack, sandwich, quart, and gallon sizes;
- H. A bag used as a garment bag, such as over-the-hanger bags or those used by a dry cleaner or laundry service;
- I. A plastic carryout bag provided by a restaurant, tavern or similar food service establishment, as defined in Section 14-1.20 of the New York State Sanitary Code (10 NYCRR § 14-1.20), to carry out or deliver food;
- J. A bag provided by a pharmacy to carry prescription drugs; or
- K. A reusable bag.

## **FILM PLASTIC**

A flexible sheet or sheets of petroleum or non-petroleum based plastic resin or other material (not including a paper carryout bag), less than 10 mils in thickness, commonly used in and as packaging products, which include, but are not limited to, plastic carryout bags, newspaper bags, garment bags, shrink-wrap, and other plastic overwrap.

## **PERSON REQUIRED TO COLLECT TAX**

Any vendor of tangible personal property subject to the tax imposed by Section 1105(a) of the New York State Tax Law.

## **PLASTIC CARRYOUT BAG**

Any plastic bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under Article

### **POSTCONSUMER MATERIAL**

A material that, having completed its intended end use or productive life, is ordinarily disposed of through solid waste disposal. "Postconsumer material" does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

### **RECYCLED PAPER BAG**

A paper single-use carryout bag provided by an applicable business to a customer at the point of sale that meets all of the following applicable requirements:

- A. Except as otherwise provided in this section, the recycled paper bag contains a minimum of 40% postconsumer materials;
- B. An eight-pound-rated or smaller recycled paper bag shall contain a minimum of 20% postconsumer material;
- C. The recycled paper bag is accepted for curbside recycling in New Castle;
- D. The recycled paper bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400, as published in September 2004; and
- E. Printed on the recycled paper bag are the percentage of postconsumer material content and the word "Recyclable."

### **RETAIL ESTABLISHMENT**

Any corporation, partnership, business, facility, vendor, or organization located in the Town of New Castle that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a consumer. "Retail establishment" includes, without limitation, any department store, drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, food market, liquor store, minimart, gasoline station store, hardware store, deli, restaurant, farmer's market vendor, and any other retail store or vendor.

### **REUSABLE BAG**

A bag that:

- A. Is either made of (i) cloth or other machine washable fabric; or (ii) other non-film plastic washable material; and
- B. Has at least one strap or handle that does not stretch and is fastened to the bag in such a manner that it allows the bag to meet the strength and durability standards set forth in C and D below; and
- C. Has a minimum lifespan of 125 uses, with a use equal to the ability to carry a minimum of 22

pounds over a distance of at least 175 feet; and

- D. Has a minimum fabric weight of 80 grams per square meter (GSM) or equivalent for bags made of any non-film plastic of natural, synthetic, petroleum based, or non-petroleum-based origin, including woven or nonwoven polypropylene (PP), polyethylene-terephthalate (PET), cotton, jute, or canvas.

**§ 54-3 Regulation of distribution of reusable bags and recycled paper bags.**

- A. An applicable business shall not provide any type of carryout bag to a person at the point of sale unless it is a reusable bag or a recycled paper bag.
- B. An applicable business may only provide a reusable bag or recycled paper bag to a customer if it collects a carryout bag cost pass-through from the customer for each reusable bag or recycled paper bag provided, as detailed below:
  - (1) The carryout bag cost pass-through shall be no less than \$0.10 for a recycled paper bag and no less than \$0.25 for a reusable bag.
  - (2) No applicable business collecting a carryout bag cost pass-through pursuant to this section shall rebate or otherwise reimburse a customer for any portion of this pass-through.
- C. In order to protect customers by providing them with the option of not taking a bag that incurs a charge for reusable bags and recycled paper bags, prior to providing a bag customers must be verbally informed of the carryout bag cost pass-through at point of sale, and the customer transaction receipts shall indicate the number of reusable bags and recycled paper bags provided and the total amount of the carryout bag cost pass-through.
- D. An applicable business may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program, not to exceed three months in the year that this chapter is first executed, and not to exceed two months per year every year thereafter.
- E. Nothing in this chapter shall prohibit an applicable business from encouraging and providing incentives for the use of reusable bags through education and through credits or rebates for customers that bring their own carryout bags at the point of sale for the purpose of carrying away goods.
- F. Nothing in this chapter shall prohibit customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag.

**§ 54-4 Exemption to carryout bag cost pass-through.**

The carryout bag cost pass-through shall not apply to any customer using the supplemental nutritional assistance program, special supplemental nutrition program for women, infants and children, or any successor programs used as full or partial payment for the items purchased.

§ 54-5 **Enforcement; penalties for offenses.**

Any person or entity in violation of this chapter shall be guilty of a violation and shall receive a warning for the first violation, may be subject to a fine in the amount of \$150 for the second violation; \$200 for the third violation, and \$250 for the fourth and subsequent violations occurring within a one-year period.

**Section 2. Ratification, Readoption and Confirmation.**

Except as specifically modified by the amendments contained herein, Chapter 54 of the Code of the Town of New Castle is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

**Section 3. Numbering for Codification.**

It is the intention of the Town of New Castle and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of New Castle; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word “ Local Law” shall be changed to “ Chapter,” “ Section” or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

**Section 4. Severability.**

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

**Section 5. Effective Date.**

This local law shall take effect immediately upon filing with the Office of the Secretary of State.