

TOWN BOARD OF THE TOWN OF NEW CASTLE

A Local Law to Adopt Chapter 54
of the New Castle Town Code
Concerning Carry-Out Bags

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

Section 1. Chapter 54 of the New Castle Town Code, entitled “Carry-Out Bags,” is hereby adopted as follows:

§ 54-1 Purpose and intent.

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 10-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.

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.

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.

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.

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 local law shall not specify how the retailers must expend the monies collected.

Therefore, for the foregoing reasons, the Town Board has decided to adopt a new chapter of the Town Code designed to limit and discourage the use of disposable single-use carry-out bags and incentivize the use of reusable carry-out bags.

§ 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 \$2,000,000.00 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, farmers 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.

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:

- (1) Except as otherwise provided in this section, the Recycled Paper Bag contains a minimum of 40 percent Postconsumer Materials;
- (2) An eight pound-rated or smaller Recycled Paper Bag shall contain a minimum of 20 percent Postconsumer Material;
- (3) The Recycled Paper Bag is accepted for curbside recycling in New Castle;
- (4) 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
- (5) 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, farmers market vendor, and any other retail store or vendor.

REUSABLE BAG

A bag with handles that is designed and manufactured for multiple reuses and meets all of the following requirements:

- (1) Is machine washable or easily cleaned or disinfected;
- (2) Does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable State and Federal standards and regulations for packaging or reusable bags;
- (3) If made of plastic, is a minimum of at least 2.25 mils (thousandths of an inch) thick; and

- (4) Has a minimum lifetime of 125 uses, which for purposes of this subdivision, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

SINGLE-USE CARRYOUT BAG

A bag other than a Reusable Bag provided at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of a Retail Establishment. Single-Use Carryout Bags do not include:

(1) Bags used to:

- (a) package loose bulk items, such as fruit, vegetables, nuts, grains, candy, cookies, or small hardware items;
- (b) contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- (c) contain or wrap flowers, potted plants, or other items where damage to or contamination of other goods placed together in the same bag may be a problem (includes paper bags to protect bottles, newspaper bags, laundry dry-cleaning bags, plastic bags around ice cream or other wet items, and small paper bags for greeting cards); or
- (d) contain unwrapped prepared goods or bakery goods.

(2) Bags provided by pharmacists to contain prescription drugs;

(3) Newspaper bags, door-hanger bags, or laundry-dry cleaning bags; or

(4) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

SINGLE-USE PLASTIC CARRYOUT BAG

Any Single-Use Carryout Bag that is less than 2.25 mils (thousandths of an inch) thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources, that is provided by a Retail Establishment or at a Town Facility to a customer at the point of sale.

TOWN FACILITY

A park, building or other facility located on Town property or operated by the Town.

§ 54-3 Prohibition on the distribution of Single-Use Plastic Carryout Bags.

- A. No Retail Establishment shall provide a Single-Use Plastic Carryout Bag to a customer.
- B. No person shall distribute a Single-Use Plastic Carryout Bag at a Town sponsored, organized or permitted event at any Town Facility.

§ 54-4 Regulation of the 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 10 cents for a Recycled Paper Bag and no less than 25 cents 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 ordinance 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.

§ 54-5 Enforcement.

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 one hundred and fifty dollars (\$150) for the second violation; two hundred dollars (\$200) for the third violation, and two hundred fifty dollars (\$250) for the fourth and subsequent violations occurring within a one-year period.

Section 2. This local law shall take effect on January 1, 2017.