



# FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.

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**Comments by  
The Food Industry Alliance of New York State, Inc.  
in Opposition to  
Draft Retail Checkout Bag Ordinance Dated December 11, 2017**

Thank you for the opportunity to submit comments on the draft Retail Checkout Bag Ordinance dated December 11, 2017. My name is Jay Peltz and I am the General Counsel and Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout New York. The Pleasantville Key Food is a member of our association.

These comments reflect FIA's general position on plastic bag bans. We will provide detailed comments on the draft bill text separately. We will note, however, certain issues of serious concern: (i) whether the ban is preempted under the state Plastic Bag Reduction, Reuse and Recycling Law, effective January 1, 2009; (ii) whether the ban violates due process rights and is therefore unconstitutional; (iii) whether the speech compelled by the village in Section 3 of the draft ordinance violates, among other provisions, the First Amendment of the U.S. Constitution; and (iv) whether a municipality has the legal authority to force private establishments to charge a price for an item and, if so, to set the price by law.

Rather than refer you to industry studies, we respectfully request that you review a 119-page study by the United Kingdom Environment Agency (copy attached) titled "Evidence, Life cycle assessment of supermarket carrier bags: a review of the bags available in 2006." Please note the focus on evidence (rather than the false, exaggerated and uncorroborated claims that typically dominate this debate) related to seven different types of carrier bags, including lightweight plastic, paper and reusable bags. In other words, since there are environmental impacts from the use of *all* types of carrier bags, a European environment agency properly viewed this matter as a carrier bag issue, not a plastic bag issue. The study does not single out lightweight plastic bags as being particularly harmful to the environment. In fact, the study found that *paper bags have a worse effect on the environment than plastic bags in all nine environmental impact categories* that were reviewed.

Moreover, on page 30, citing the WRAP 2005 study on the reuse of lightweight carrier bags, the study reported that "Overall it was estimated that *76 percent of single use carrier bags were reused* (emphasis added)." It is therefore misleading to characterize lightweight plastic bags as "single use." This high reuse rate must be reflected in any assessment of lightweight plastic bags' environmental performance.

In addition, the first finding of the Executive Summary of the study is dispositive: "The environmental impact of all types of carrier bag[s] is dominated by resource use and production stages. Transport, secondary packaging and *end-of-life management generally have a minimal influence on their performance* (emphasis added)." The entire ban case is based on end-of-life management impacts, such as litter. Accordingly, the whole ban case is based on factors that have a "...minimal influence..." on lightweight plastic bags' environmental performance.

Regarding resource use and production stages, reusable bags use much more energy and extract much more resources from the environment to produce than lightweight plastic bags, due to their bigger size. Accordingly, reusable bags have a greater environmental impact than lightweight plastic bags when manufactured. The only way reusable bags help the environment is if they are reused enough to offset the environmental deficit created upon manufacture. While we have seen no data addressing this issue, we are happy to assist in a sensible effort to increase reusable bag use. More on that below.

Unfortunately, false, exaggerated and uncorroborated claims have become a hallmark of this debate. For example, according to a 2008 FoxNews.com article, "scientists and environmentalists have attacked a global campaign to ban plastic bags that they say is based on flawed science and exaggerated claims." The article referred to politicians and marine experts who "attacked the British government for joining a 'bandwagon' based on poor science." The article points out that "The central claim of campaigners is that the bags kill more than 100,000 marine mammals and one million seabirds every year. However, this figure is based on a misinterpretation of a 1987 Canadian study in Newfoundland, which found that, between 1981 and 1984, more than 100,000 marine mammals, including birds, were killed by *discarded nets*. The Canadian study did not mention plastic bags."

"Fifteen years later in 2002, when the Australian government commissioned a report into the effects of plastic bags, its authors misquoted the Newfoundland study, mistakenly attributing the deaths to 'plastic bags.'"

"The figure was latched on to by conservationists as proof that the bags were killers. For four years the 'typo' remained uncorrected. It was only in 2006 that the authors altered the report, replacing 'plastic bags' with 'plastic debris.' But they admitted: The actual numbers of animals killed annually by plastic bag litter *is nearly impossible to determine* (emphasis added)."

"In a postscript to the correction they admitted that the original Canadian study had referred to *fishing tackle*, not plastic debris, as the threat to the environment. Regardless, the erroneous claim has become the keystone of a widening campaign to demonize plastic bags (emphasis added)."

Business migration has been a regular consequence of local bans enacted throughout the country. Accordingly, the unlevel playing field that will be created if the draft ordinance becomes law will cause the Pleasantville Key Food to lose sales. This will make it more difficult for the store to pay its bills, including a pay scale that is increasing as the minimum wage rises to \$15.00 an hour.

As noted in an email sent by FIA to the Village Board on October 25, 2017, in March 2017 Governor Cuomo announced the launch of the New York State Plastic Bag Task Force (Task Force). The Task

Force is charged with developing a report and proposing statewide legislation to address the impact of plastic bags on the environment.

According to the Governor's website, "Members of the Task Force will work to develop a *uniform and equitable statewide plan* to address New York's plastic bag problem (emphasis added)." The draft ordinance, if enacted, will create another local regulatory framework that will frustrate the Task Force's effort to facilitate the implementation of a uniform and equitable solution to carrier bag issues throughout the state.

On January 1, 2018, Suffolk County will implement its carrier bag law, adopted in October 2016. It does not ban the distribution of lightweight plastic bags. Rather, it mandates a fee of at least five cents (thus giving retailers the flexibility to raise the fee above a nickel, which will result in greater reductions in disposal bag use), that is high enough to incentivize customers to reuse reusable bags at a rate that will offset the environmental deficit created when reusable bags are manufactured. Environmentalists, county officials, organized labor and FIA are cooperating in the implementation of the law. This collaborative effort will slash the use of disposable plastic and paper bags.

To the contrary, no similar consensus will develop around the draft legislation. In addition, reflecting the general experience in ban jurisdictions across the country, by making lightweight plastic bags unavailable, the draft bag ordinance will ensure a sharp *increase* in paper bag distribution compared to pre-ban levels (notwithstanding the mandated fee) and, accordingly, a *lower* reusable bag reuse rate, both of which will harm the environment.

For example, paper bags biodegrade into methane. According to a July 2013 briefing note from the British Columbia Environment Ministry staff, methane emissions are a serious concern, since they have a global warming impact *21 times higher* than carbon dioxide.

We respectfully reiterate our request, originally provided in FIA's email to the Village Board dated October 25, 2017, to schedule a meeting with Rich Grobman of the Pleasantville Key Food, village officials and me to discuss the draft legislation. We also respectfully urge the village to follow Suffolk County: After proposing a plastic bag ban, the bill sponsor introduced the fee bill discussed above. The result has been broad cooperation by stakeholders across the spectrum in implementing the fee law. As a result, the environment, retailers and county residents will benefit.

Thank you for your time and attention to FIA's concerns.

Respectfully submitted,

**Food Industry Alliance of New York State, Inc.**

**Jay M. Peltz**

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**December 22, 2017**