

NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: **CITY OF NEW HAVEN MUNICIPAL CODE AMENDMENT.** Amendment to Article II, Section 30 $\frac{3}{4}$ - 41 of the Code of Ordinances to reduce plastic bags at retail check-out in the City of New Haven by engaging stakeholders to bring your own bag(s) to use at retail check-out in order to stop the use of plastic bag waste and prohibit the provision of all plastic checkout bags at the time of checkout after one year of approval of this Ordinance. (Mayor Tony N. Harp)

REPORT: 1558-10

ADVICE: Approval

BACKGROUND

Throughout the past six months, Adler Catalbasoglu, the City of New Haven Environmental Advisory Council, city staff, including Esther Armmand, and others have worked together to determine how to best mitigate environmental impacts related to plastic bags at the point of retail check out. Mayor Tony Harp has submitted an Order to the Board of Alders to adopt an amendment to Section 30 $\frac{3}{4}$ - 41 of the Code of Ordinances to ban the use of plastic bags at retail checkout after one year of approval of the Ordinance and invite the City and various stakeholders to work collaboratively to encourage the use of reusable bags and containers by consumers and retailers.

Proposed Amendment Language:

City of New Haven Municipal Code, Article II, Section 30 $\frac{3}{4}$ - 41

SECTION 1. Findings, Collaborative Approach and Results.

Plastic bags, though a convenient commodity, have been recognized as detrimental to the environment and to the beautification of the City of New Haven. Plastic bags do not degrade into safe compounds rather plastic introduce unsafe chemicals and toxins into the environment. Plastic bags also contribute to unsightly litter in public and private spaces throughout the City of New Haven and create impediments to the City's landfill recycling diversion goals.

New Haven is proposing a policy primarily collaborative in nature inviting stakeholders, both business and consumer, to engage on this complex issue to reduce plastic bag use in carrying out activities in daily life as consumer and merchant. Engagement of businesses and consumers locally will focus on citywide solutions to reduce plastic bags at retail checkout. This Ordinance will help reduce and eventually eliminate plastic bag use at retail checkout by actively engaging the entire New Haven Community in the reduction of plastic bag usage in commercial businesses. Working collaboratively to replace plastic bags with more sustainable substitutes in commercial retail will benefit all parties and the city we share.

Many believe that a ban on plastic bags should be punitive and that fees must be part of an approach to create effective policy. Many policy makers justify fees as critical to reduce single-

use bag usage at checkout. We do not deny the efficacy of this method. However, in our collaborative approach, we will first work together across New Haven to bring awareness to change consumer behaviors in order to support a healthy earth movement. The New Haven approach will first engage rather than penalize businesses. The City of New Haven Ordinance will focus on educating and to incentivizing consumers and businesses to switch to reusable bags. Nevertheless, the City of New Haven does realize that most experts believe that an ordinance fee component is required. However, a fee component may tend to be divisive, punitive and act as a barrier to the passage of an ordinance to eliminate the use of plastic bags at checkout.

This proposed innovative policy option is unique. First and foremost, the intent is to engage strategic partners, residents, businesses, visitors, and others who come to New Haven for work or recreation to become actively engaged in source reduction and environmental sustainability rather than creating waste. This policy will encourage everyone to bring their own bag to hold items purchased at point of check out.

In summary, the purpose of this Ordinance is to reduce the use of plastic bags at retail checkout, educate and engage the population on environmentally friendly consumer behaviors of and sustainable alternatives, such as reusable bags and containers. The goal is to reduce the quantity of plastic and paper waste in our environment, and to transition from disposable to reusable bags and containers at commercial retailers across the City.

New Haven recognizes the need to be proactive on environmental issues, and as such must commit to stemming the proliferation of plastic bags in our city. This Ordinance specifically addresses plastic bags distributed to customers at checkout and outlines a plan for the reduction of their use.

Section 2 – Ordinance on Plastic Bag Reduction

Purpose:

The purpose of this Ordinance is to support a healthy earth and protect the welfare of New Haven residents by encouraging the use of reusable Checkout Bags and by establishing a ban on the distribution of all plastic Checkout Bags by businesses at the point of sale. This Ordinance bans the use and distribution of any and all non-reusable Checkout Bags in or by any grocery store, grocery delivery service, department store, hardware store, liquor store, convenience store, library, school, farmers market vendor, or any other commercial retailer within the city of New Haven. This Ordinance encourages the use of healthy earth preferable alternatives, such as reusable cloth, paper bags and other bags/containers made of reusable materials. It also sets the stage for a series of city sponsored events to reduce the usage of single-use plastic bags.

Incentives at Retail Checkout by business establishments may be provided to encourage consumers to bring your own bag.

Consumers are encouraged to bring their own reusable bags/containers to a business establishment for use as checkout bags.

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 (c) Prohibition.

1) Distribution of Plastic Checkout Bags.

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

2) 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.

3) Acceptable Checkout Bags.

- a) A Business Establishment may provide as a courtesy to customers a Recycled Paper Checkout Bag.
- b) 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.

Section (d) Violations, Penalties and Enforcement.

In accordance with the New Haven Code of Ordinances, Article II, Section 30 ³/₄ - 41, it shall be the duty of the Municipal Resource Recovery Authority and the Solid Waste & Recyclables Authority to partner to provide the strategic planning, education, management and enforcement to this provision and any rules or regulations promulgated under this Ordinance. The Solid Waste Authority shall designate an enforcement officer. The Enforcement Officer may order any person or business that violates this Ordinance to abate such violation and shall be hereby authorized and empowered to issue citations for violations of the ban on the use of plastic bags at Checkout with the City of New Haven.

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

- 1) After one year of the adoption of this Ordinance, 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.

2) 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.

3) 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.

4) For each violation that occurs after the issuance of the written warning notice for an initial violation, the fine imposed by the Enforcement Officer or his/her designee shall be as follows:

a) One hundred fifty dollars (\$150) for the second violation;

b) Two Hundred fifty dollars (\$250) for the third violation and each subsequent violation.

c) Appeals may be made pursuant to Title XX: Chapter XX: Hearing Procedure for Municipal Citations of the City of New Haven Code of Ordinances.

Section (e) 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 (f) 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 (g) 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 XXX 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 Board of Alders 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 annually in accordance with this subsection unless a different time frame is established upon approval of an application.
- E. A deferment application shall include all information necessary for the Solid Waste Authority 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 Solid Waste Authority 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 Ordinance.

G. Deferment decisions are effective immediately and final.

PUBLIC HEARING

A public hearing was held on June 19, 2019. A transcript of the hearing, CPC meeting 1558, is available from the City Plan Department.

PLANNING CONSIDERATIONS

Approving the proposed amendment to Article II, Section 30 ¾ - 41 of the Code of Ordinances to reduce plastic bags at retail check-out in the City of New Haven by prohibiting the provision of all plastic checkout bags at the time of checkout is in the best interest in of the public and the environment and complies with the City's Comprehensive Plan and Sustainable CT standards and goals.

ADVICE

The Commission finds the Order in the best interest of the City and recommends approval.

ADOPTED: June 19, 2019
Ed Mattison
Chair

ATTEST: 
Aicha Woods
Executive Director, City Plan Department