

SINGLE USE PLASTIC CARRY OUT BAG

ORDINANCE

APPROVED AT TOWN MEETING 06-14-2016

EFFECTIVE 10-14-2016

SECTION 1. PURPOSE AND INTENT

The production and use of single-use plastic carry-out bags have significant impacts on the marine and land environment of all coastal communities that outweigh their usefulness to the public. These impacts include, but are not limited to: contributing to the potential death of marine animals through ingestion and entanglement; contributing to pollution of the land and marine environment; imposing an unnecessary burden on our solid waste management; clogging our storm water drainage systems; and requiring the use of non-renewable fossil fuels for manufacture.

Voluntary efforts to control the use of single-use plastic carry out bags have had minimal effect to date.

The Town of Kennebunk strives to conserve resources; reduce greenhouse gas emissions, waste and litter; and to protect the quality of life for the Town's residents and visitors.

The purpose of this ordinance is to eliminate the usage of single-use carry out plastic bags by all Retail Establishments in the Town of Kennebunk.

SECTION 2. AUTHORITY

This Ordinance is adopted pursuant to the Town's Home Rule Authority granted under Art. VIII, Pt. 2, Sec. 1 of the Maine Constitution and Title 30-A M.R.S. §3001 of the general laws of Maine.

SECTION 3. DEFINITIONS

Customer: Any person obtaining food or merchandise at or from a Retail Establishment.

Food: Any nutritious substance that is intended for eating and drinking either in its original form or that is prepared in any manner for the same; however, food does not include produce, meat, lobsters, fish or bulk foods to the extent those products are contained within handle-less plastic bags solely used for protection of the food or for containing potential contamination of those foods or other foods in contact therewith.

Merchandise: Goods or articles that are bought and sold between a retailer and a customer for use or consumption. Merchandise does not include dry cleaning, newspapers or wet items to the extent those items are contained within handle-less plastic bags solely used for protection of the items contained therein.

Recyclable Paper Bag: Paper bags that are accepted for recycling by the Town of Kennebunk's curbside recycling program.

Retail Establishment: Any commercial enterprise engaged in the sale of food or merchandise including, but not limited to, grocery and convenience stores, markets, pharmacies, restaurants, take-out food purveyors, seasonal and temporary businesses and other merchandise retailers. Nonprofit and religious organizations are not considered Retail Establishments.

Reusable Bag: A bag with handles that is specifically designed and manufactured to withstand repeated uses over a period of time, is made from a material that can be cleaned and disinfected regularly and is at least 3 mils thick if made from plastic.

Single-Use Plastic Carry Out Bag: Plastic bag with a thickness of less than 3 mils (3/1000 of an inch) with an integral handle provided at check-out for the purpose of transporting food or merchandise out of the Retail Establishment.

SECTION 4. STANDARDS

Every Retail Establishment located in the Town of Kennebunk shall comply with this Ordinance.

- A. No Single-Use Plastic Carry-Out Bag shall be distributed, either with or without charge, to a Customer, at any Retail Establishment located in the Town of Kennebunk.
- B. Customers are encouraged to bring their own Reusable Bags to Retail Establishments, which may choose to give customers a rebate, discount or other incentive for such.
- C. Retail Establishments may provide Customers with Recyclable Paper Bags or Reusable Bags, with or without a charge, as the Retail Establishments so desire.

SECTION 5. EXCEPTIONS

- A. Single use plastic bags, without handles, used to contain dry cleaning, newspapers, wet items, and to protect produce, meat, seafood and other bulk foods from damage or contaminating other items are permissible.
- B. Nonprofit organizations or religious institutions are exempt from the provisions of this Ordinance.

SECTION 6. ADMINISTRATION AND ENFORCEMENT

- A. The Town Manager or his designee shall have the authority to administer and enforce this Ordinance.
- B. If it is determined that a violation has occurred, the Town Manager or his designee shall issue a written warning to the Retail Establishment for the initial violation. If an additional violation occurs after a written warning has been issued, the Town Manager or his designee shall issue a written notice of violation (“NOV”) and shall impose a penalty against the Retail Establishment. The penalty associated with each written notice of violation shall be established by the Board of Selectmen annually and set forth in the Board’s Fine Schedule, available in the Town Clerk’s office and on the Town’s electronic web site.
- C. No more than one penalty shall be imposed upon a Retail Establishment within a 7-day period.
- D. A Retail Establishment shall have 15 days following receipt of a written notice of violation to pay the penalty.

SECTION 7. APPEALS

Any decision, action, or inaction pertaining to this Ordinance may be appealed to the Maine Superior Court (York Cty.). Any appeal must be filed within 30 days of the date of the written warning or NOV issued.

SECTION 8. EFFECTIVE DATE

This ordinance shall take effect four (4) months following the date of adoption by the voters to allow Retail Establishments time to make necessary adjustments to bring operations into compliance with the law.

SECTION 9. SEVERABILITY

Should any portion of this Ordinance be held invalid by a court of competent jurisdiction, this shall not affect the validity of remaining portions of this Ordinance.

SECTION 10. AMENDMENTS

The Board of Selectmen may, after public notice and hearing, amend this Ordinance and draft and adopt regulations implementing the terms of this Ordinance on any matter not expressly set forth herein or as otherwise provided by law.