

ORDINANCE NO: 05-19

ORDINANCE

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MIDDLETOWN:
That Article IV of Chapter 253, Sections 253-27 to 253-34, be added to the Middletown Code of Ordinances as follows:

CHAPTER 253 SOLID WASTE

ARTICLE IV. PLASTIC BAG BAN

§ 253-27. Purpose.

The intent of this ordinance is to improve the environment in Middletown by encouraging the use of reusable checkout bags and banning the use of plastic bags for retail checkout of purchased goods. Retail establishments are encouraged to make reusable bags available for sale.

§ 253.28. Justification.

Plastic checkout bags pollute our local streams and rivers, disintegrate into smaller bits that contaminate soil and waterways and enter into the food supply of animals, fish and humans. They further contribute to litter and increase the volume and toxicity of waste materials in our solid waste stream costing the City considerable economic resources.

§ 253.29. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CHECKOUT BAG

A bag provided by a store to a customer at the point of sale. The term “checkout bag” does not include reusable bags, laundry or dry cleaner bags, newspaper bags, paper gift bags, produce bags, product bags, or bags sold in packages containing multiple bags intended for uses such as garbage, food storage, pet waste, or yard waste bags.

ENFORCEMENT OFFICER

The Middletown Recycling Coordinator will enforce the provisions of this Ordinance.

PRODUCE/PRODUCT BAG

Any bag without handles used exclusively to carry produce, meats or other food items to the point of sale inside a store or to prevent such food items from coming in direct contact with other purchased items.

RECYCLABLE PAPER BAG

A recyclable paper bag means a paper bag with the following characteristics: (1) contains no old growth fiber; (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and (3) displays the words “Reusable” or “Recyclable on the outside of the bag.

REUSABLE CHECKOUT BAG

A reusable bag means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other fabric.

RETAIL ESTABLISHMENT

Any for profit, commercial enterprise including, but not limited to, retail stores, restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses, food trucks and household goods stores. The term “retail establishment” does not include yard sales, tag sales, and/or other sales by residents at their home.

§ 253.30. Prohibition on Checkout Bags and Other Requirements

- A. If any retail establishment provides a checkout bag to customers, the bag shall be a recyclable paper bag or a reusable checkout bag.
- B. Retail establishments are strongly encouraged to make available for sale to customers reusable checkout bags and customers are encouraged to bring their own reusable checkout bags to retail establishments.
- C. Any retail establishment that elects to provide recyclable paper checkout bags shall charge the consumer at the point of purchase \$0.10 for each bag. The charge imposed by a retail establishment as provided herein shall be retained by the retail establishment.
- D. The charge reflected in subsection (C) above shall not apply to the use of checkout bags to carry items purchased pursuant to the Supplemental Nutritional Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), or a similar governmental food assistance program.
- E. All retail establishments shall indicate on the customer’s transaction receipt the number of checkout bags provided and the total of amount charged for the checkout bags. It shall be a violation of this ordinance for a retail establishment to fail to separately itemize the charge upon a customer’s purchase of such bag.
- F. No retail establishment shall rebate or otherwise reimburse a consumer for any portion of this charge.
- G. All Retail Establishments shall post signs at or near the point of purchase to notify consumers of the provisions of this article. Such signs shall include the following

instruction for consumers: “All paper carryout bags provided by this store to a consumer shall be subject to a fee of ten cents per bag. Carryout bags brought by consumers into this store to carry purchased goods from this store shall not be subject to a fee.”

§ 253-31. Exemption.

The provisions of this chapter do not apply to bags used by non-profit organizations or other charities to distribute food, grocery products, clothing, or other household items.

§ 253-32. Enforcement

Upon notification that a violation of this ordinance exists, the Enforcement Officer will investigate and verify the non-compliance. If the Enforcement Officer determines that any violation has occurred, he/she shall proceed as follows for enforcement purposes:

- A. Upon the first violation, the Enforcement Officer shall issue a written warning notice to the person and/or retail establishment in violation of this ordinance. The written warning shall give the person and/or retail establishment at least 7 business days to remedy the violation. The written warning shall also state that failure to cure will result in a fine of \$45 for each separate violation. Each day that the person and/or retail establishment remains out of compliance shall constitute a separate violation. No penalty shall be imposed for this first violation.
- B. Upon any subsequent violation(s) or failure to cure as stated above, the Enforcement Officer shall impose a penalty of \$45 for each day that the violation remains.
- C. Any fines not promptly paid will be referred to the City's collection firm.

§ 253-33. Operative date.

This ordinance shall become effective six months following its date of adoption to allow retail establishments to dispose of their existing inventory of plastic carryout bags and convert to alternative packaging materials compliant with this ordinance.

§ 253-34. Severability.

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.

Submitted by: Mayor Daniel T. Drew
Councilwoman Mary Bartolotta
Councilman Gerald Daley
Councilman Gene Nocera
Councilman Carl Chisem

Councilman Robert Santangelo
Councilwoman Linda Salafia

Approved by: General Counsel Commission at its meeting held on March 14, 2019.

**Status: APPROVED, AS AMENDED
by Common Council, City of Middletown
at its meeting held on APRIL 1, 2019**

K: review/ ordinance/ plastic bags ORD NO 05-19 – 1 April 2019