

DRAFT 2.4
3.19.19

Ordinance for the Management of Plastic and Paper Checkout Bags in Darien

WHEREAS, non-biodegradable disposable carryout bags often are discarded into the environment and end up polluting our waterways, clogging sewers, endangering marine life and causing unsightly litter; and

WHEREAS, the physical breakdown of non-biodegradable disposable carryout bags results in micro plastics that enter the food chain and ultimately accumulate in the human body leading to adverse health effects; and

WHEREAS, non-biodegradable plastic carryout bags are not considered recyclable; and

WHEREAS, it is beneficial to the land and aquatic environment and to human health to prohibit the use of non-biodegradable disposable carryout bags and encourage the use of reusable carryout bags.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF DARIEN THAT:

To protect the land and the aquatic environment and human health in the Town of Darien, under Chapter XXXX an Ordinance for the Management of Plastic and Paper Checkout Bags in Darien is hereby adopted:

Management of Plastic and Paper Checkout Bags in Darien

Section 1. Purpose

This Ordinance is intended to reduce bag waste in order to protect and preserve the environment in Darien for the benefit and welfare of its residents, by encouraging the use of reusable checkout bags, through the phase-out of plastic checkout bags and non-recycled paper checkout bags and the introduction of a charge on recycled paper checkout bags to help businesses defray the incremental cost of providing recycled paper checkout bags instead of plastic checkout bags.

Section -2. Definitions

The following words, terms and phrases, when used in this Ordinance, have the meanings ascribed to them as follows:

2.1 *Business Establishment*: means any person, business or non-profit entity that sells merchandise, goods or materials, including without limitation, clothing, food or personal items of any kind, to a customer, and includes, by way of example and not limitation, any grocery store, grocery delivery service, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, hospital, library, school, including temporary vendors at farmers markets, street fairs and school or Town sponsored events and facilities. The term shall not include the sale of goods at yard sales, tag sales, or other sales by residents at their home, and/or sales by non-profit organizations.

2.2 *Checkout Bag*: means a carryout bag used by customers at checkout for the purpose of removing items purchased from or provided by a Business Establishment.

2.3 *Environmental Charge*: means the amount required to be collected under Section 5 by a Business Establishment at the point of checkout for a customer's use of a Recycled Paper Checkout Bag provided by that Business Establishment.

2.4 *Environmental Compliance Officer*: The Town official(s) designated by the Board of Selectmen to act as a person who shall be responsible for investigating complaints, issuing Warnings, and issuing Citations.

2.5 *Environmental Compliance Hearing Officer*: The Town official(s) designated by the Board of Selectmen in accordance with Connecticut General Statutes 7-152c.

2.6 *Mil*: means a measurement equal to one thousandth (1,000th) of an inch.

2.7 *Paper Checkout Bag*: means a paper Checkout Bag that does not meet or exceed the specifications set forth in the definition of Recycled Paper Checkout Bag. The term Paper Checkout Bag does not include a Product Bag.

2.8 *Plastic Checkout Bag*: means any plastic Checkout Bag which is less than twelve (12) Mil thick and which is derived from either fossil fuel or a biologically-based source, such as corn or other plant sources, which is provided to the customer at checkout by a Business Establishment and which does not meet or exceed the specifications set forth in the definition of Reusable Checkout Bag. The term Plastic Checkout Bag does not include a Product Bag.

2.9 *Product Bag*: means plastic or paper bags available for purchase or use by customers at Business Establishments that, except as enumerated below, are not intended to be Checkout Bags. These include but are not limited to: newspaper bags, door-hanger bags, laundry dry-cleaning bags, garment bags, bags sold in packages containing multiple bags intended for use as garbage, pet waste bags, yard waste bags and bags that are used by customers inside stores to: package bulk items such as fruit, vegetables, mushrooms, nuts, grains, candy; contain or wrap frozen foods, meat or fish, whether packaged or not; contain or wrap flowers, potted plants or other items where dampness may be a problem; contain unwrapped prepared foods or bakery goods; contain pharmacy prescriptions; or safeguard public health during the transportation of hospital waste.

2.10 *Recycled Paper Checkout Bag*: means a bag that contains no old growth fiber and a minimum of 40% post-consumer recycled content, and is 100% recyclable.

2.11 *Reusable Checkout Bag*: means a bag that is designed and manufactured for multiple reuses and meets or exceeds all of the following requirements:

- (a) Does not contain lead, cadmium or any other heavy metal in toxic amounts;
- (b) Has a minimum lifetime of 125 uses, which for purposes of this Ordinance means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet, or if it is made from plastic, has a minimum thickness of 12 Mil;
- (c) Is washable; and
- (d) Has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer and the location (country) where the bag was manufactured. Notwithstanding any other provision of this Ordinance, a reusable bag does not include any plastic bag which is less than 12 Mil thick.

2.12 Written Notices: Warnings or Citations issued pursuant to this Ordinance shall be delivered to the Business Establishment by hand delivery to a manager or other person in charge of the Business Establishment, or by certified mail, return receipt requested to said Business Establishment care of the owner, agent, manager or other person in control of said Business Establishment. Copies of all Warnings and Citations shall be sent to the Board of Selectmen.

Section 3. Prohibition on the Distribution of Plastic Checkout Bags and Paper Checkout Bags

Except as otherwise provided herein, no Business Establishment shall provide or sell a Plastic Checkout Bag or a Paper Checkout Bag to a customer in the Town of Darien.

Section 4. Acceptable Checkout Bags

- (a) A Business Establishment may provide customers with a Recycled Paper Checkout Bag in accordance with the requirements for a Charge under Section 5 below.
- (b) A Business Establishment may sell customers a Reusable Checkout Bag.
- (c) Nothing in this Ordinance shall prohibit customers from using bags or containers of any type, at the point of checkout, that they have brought to a Business Establishment for the purpose of carrying away goods.

Section 5. Environmental Charge

A Business Establishment must collect from a customer an Environmental Charge of 10 cents for each Recycled Paper Checkout Bag provided to such customer by such Business Establishment. The Environmental Charge shall be retained solely by the Business Establishment to help defray the incremental cost to such Business Establishment of providing recycled paper checkout bags instead of plastic checkout bags.

- (a) A Business Establishment must notify the customer of the Environmental Charge prior to checkout by means of signage or verbal statement.
- (b) The customer transaction receipt shall indicate the total number of Recycled Paper Checkout Bags provided and the total amount of the Environmental Charge payable.
- (c) No Business Establishment collecting an Environmental Charge pursuant to this Ordinance shall rebate or otherwise reimburse a customer for any portion of the Environmental Charge.

- (d) Nothing in this Ordinance shall prohibit a Business Establishment from encouraging or providing incentives for the use of Reusable Checkout Bags. A Business Establishment may use credits or rebates for customers who bring their own Checkout Bags for the purpose of carrying away goods.

Section 6. Violations

If the Environmental Compliance Officer determines that a violation of this Ordinance has occurred, the Environmental Compliance Officer shall issue a written Warning to the Business Establishment for the initial violation.

If the Environmental Compliance Officer determines that an additional violation of this Ordinance has occurred after the written Warning has been issued for an initial violation, the Environmental Compliance Officer shall then issue a Citation as a notice of infraction imposing the penalty against the Business Establishment as described in Section 7.

Section 7. Penalties and Enforcement

The penalty imposed by the Environmental Compliance Officer shall be provided as follows:

- (a) The fine for the first Citation shall be One Hundred Fifty and 00/100 Dollars (\$150.00); the fine for the second Citation shall be Two Hundred Fifty and 00/100 Dollars (\$250.00), payable to the Town.
- (b) No penalty shall be imposed within 60 days of the first Warning being issued, and no more than one penalty shall be imposed upon a Business Establishment within a 7-day period.
- (c) The Business Establishment to which a Citation has been issued shall be responsible for reporting, in writing, subsequent compliance to the Environmental Compliance Officer.
- (d) The Board of Selectman shall appoint one or more Environmental Compliance Hearing Officers to conduct the hearings resulting from Warnings or Citations issued pursuant to this Ordinance in accordance with Section 7-152(c) of the Connecticut General Statutes and subject to the provisions of said section.

Section 8. Challenging the Issuance of the Citation

- (a) No later than 30 days after the issuance of a Warning or a Citation, a Business Establishment may file a written appeal with the Environmental Compliance Officer to challenge the basis for the Environmental Compliance Officer's decision.
- (b) Upon receipt of a timely appeal, the Environmental Compliance Hearing Officer shall hold a hearing to consider facts and argument with respect to the appeal presented by the Business Establishment. The Environmental Compliance Officer shall also have an opportunity to be heard. Notice of the time and place of said hearing shall be sent to the Business Establishment and the Environmental Compliance Officer at least 15 days before the hearing. Reasonable adjournments of the hearing date may be accorded by the Environmental Compliance Hearing Officer. On the basis of information introduced at the hearing, the Environmental Compliance Hearing Officer may affirm the action or decision of the Environmental Compliance Officer if the officer finds that such action or decision was properly imposed. Said officer may reverse the action or decision if the officer finds the action or decision was not taken in accordance with this Ordinance or was otherwise without a reasonable basis.

Section 9. Exemptions

- (a) The charge reflected in Section 5 of this Chapter shall not apply to the extent it would violate the laws of the United States or the State of Connecticut.
- (b) The charge reflected in Section 5 of this Chapter shall not apply to any retail sale or use of disposable Checkout Bags that are used to carry items purchased pursuant to the Supplemental Nutritional Assistance Program or a similar governmental food- assistance program.
- (c) It shall be presumed that the Recycled Paper Checkout Bags sold or used by Business Establishments are subject to the charge imposed under Section 5 of this Chapter until the contrary is established. The burden of proving that such Recycled Paper Checkout Bags are not chargeable hereunder shall be upon the person so claiming.
- (d) Small Business Establishments comprising of a single location of less than ten thousand (10,000) square feet are permanently exempt from charging the Environmental Charge to their customers and may continue to use

Paper and Plastic Checkout Bags through December 31, 2020. Commencing on January 1, 2021 small Business Establishments covered by this exemption shall be required to provide Recycled Paper Checkout Bags to all customers or be subject to the penalty and violation provisions of this Ordinance set forth in Sections 6 through 8 hereof.

Section 10. Funds received from penalty payments

Funds received from penalty payments will be deposited in the Town's General Fund.

Section 11. Appeal of Penalty Assessment to Superior Court

A person against whom a penalty has been entered arising out of a violation of this Ordinance is entitled to judicial review by way of appeal in accordance with the provisions of C.G.S. 7-152(c). Penalties as provided in Section 7 may be abated if the court determines that the appeal was taken in good faith, with probable cause and not for purposes of delay.

Section 12. Annual Report

By January 31 of each year, the Environmental Compliance Officer shall submit an annual report to the Board of Selectmen as of January 1 of each year with respect to the preceding calendar year, including the number of: Complaints received, Warnings issued, Citations issued, fines assessed, and collected.

Section 13. Severability

In the event that any part or portion of this Ordinance is declared invalid for any reason, all the other provisions of this Ordinance shall remain in full force and effect.

Section 14. Other Enforcement

Nothing in this chapter shall be deemed to prohibit or limit in any manner any enforcement action with respect to any zoning, building, public health, fire, inland wetlands or other statutes, code, regulation or laws relating to the use of real property.

Section 15. Effective Date

This Ordinance is to become effective January 1, 2020.

DRAFT