

Referral No. 1290
March 19, 2019

**LOCAL LAW NO. OF 2019
COUNTY OF ROCKLAND
STATE OF NEW YORK**

(Introduced by: Hon. Laurie Santulli and Hon. Nancy Low-Hogan)

A local law amending Chapter 137 of the Rockland County Code entitled Pollution Control, by adding Article IV, the Rockland County Plastic Carryout Bag Waste Reduction Act.

Be it enacted by the legislature of the county of Rockland as follows:

Section 1. Chapter 137 of the codification of the Local Laws and resolutions of the County entitled the Laws of Rockland County is hereby amended by adding as follows:

ARTICLE IV- The Plastic Carryout Bag Waste Reduction Act

§ 137-26. Title
This Article shall be known as the Plastic Carryout Bag Waste Reduction Act.

§ 137-27. Legislative Intent

Throughout Rockland County, plastic bags have become a major source of litter and pollution. They can be found stuck in trees, litter our neighborhoods, destroy wildlife, clog storm drains, float into and end up in our water ways and fill landfills. This is especially concerning given that the Hudson River runs along the county's eastern border. Plastic bags do not biodegrade, are very difficult to recycle and are often only "reused" once before being discarded. Moreover, these bags are extremely problematic because they create tangles and jams in recycling and waste water processing equipment, making it time-consuming and costly for municipalities and recycling centers to manage.

According to National Geographic, larger plastic debris breaks down by sunlight and wave action into microplastics, rice-sized bits that measure five millimeters or less. These "microplastics" are then ingested by tiny fish who are then in turn eaten by larger fish. According to scientists, the toxins in those microplastics could be transferred to fish consumed by humans, thus having larger implications for human health.

In Rockland County, it is estimated that a total of 2,130 tons of single-use plastic bags were trashed in 2017, landing Rockland in the Top 8 municipalities in New York State that discard plastic bags in curbside and containerized collections. Due to problems with recycling contamination, the Rockland County Solid Waste Management Authority (RCSWMA) has developed a Residential Decal Program, available in English and Spanish, to inform residents that they should not place plastic bags in recycling bins or place recyclables in plastic bags, rather they should be brought back to retailers for recycling. As a result of this education campaign, the RCSWMA has seen a 20-30% reduction in plastic bags being placed in recycling bins. However, implementation of the Decal Program is costly and needs to continue indefinitely or the contamination will increase over time. Recycling contamination due to plastic bags, however, continues to be a problem because it slows down the recycling process, damages the sorting machine and can endanger workers on the sorting line.

In New York State, several municipalities (i.e. Town of East Hampton, Village of East Hampton, Hastings on the Hudson, Larchmont, Marmaroneck, New Paltz, Patchogue, Rye, Town of South Hampton, Village of Southampton and Village of Piermont) have enacted plastic bag bans to deal with the problems that these bags create. Furthermore, there is legislation pending at the state-level but no indication that this will be moving forward at this time.

The Rockland County Legislature, thereby finds that it is necessary to implement a plastic bag ban to better protect our environment, waterways, and health and believes that a shift to reusable bags and recyclable paper bags is a better alternative. According to the New York State Plastic Bag Task Force Report, published on January 13, 2018, evidence shows that similar policies implemented in other jurisdictions have resulted in a significant reduction in plastic bag use, further reducing the raw material and natural resources used to make, transport and recycle these bags. Overall, the Legislature of Rockland County believes that using reusable bags and recyclable paper bags will benefit the overall health, safety and welfare of the residents of Rockland County and the local environment.

For all the reasons listed, the Legislature of Rockland County has decided to adopt a local law to significantly limit the use of disposable single-use plastic carryout bags and incentivize the use of reusable bags with recyclable paper bags as an alternative to be used by retailers and restaurants.

§ 137-28. Definitions

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

APPLICABLE BUSINESS

A. Any of the following establishments located within the County of Rockland:

(1) Any corporation, partnership, business, facility, vendor, or organization, located in the County of Rockland that sells or provides merchandise, goods or materials, including but not limited to, clothing, food, or personal items of any kind, directly to a consumer. An applicable business shall include but is not limited to any retail establishment, department store, apparel stores, home center and hardware stores, stationary and office supply stores, drug store, pharmacy, supermarket, convenience food store, food mart, food market, farmers market vendor, liquor store, minimart or gasoline station store.

(2) A restaurant, deli or any other business that receives 90% or more of its revenue from the sale of prepared food to be eaten on or off its premises.

B. Applicable business does not include:

- (1) emergency food providers or
- (2) mobile food service vendors or
- (3) 501(c)(3) organizations.

EMERGENCY FOOD PROVIDER

Any facility, including soup kitchens and food pantries operated by a not-for profit corporation or by a federal, state or local government agency that provides food to needy individuals at no charge to the person receiving the food.

MOBILE FOOD SERVICE VENDOR

A self-contained food service operation, located in a readily movable pushcart, motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service.

POSTCONSUMER MATERIAL

A material that, having completed its intended end use or productive life, is ordinarily disposed of through solid waste disposal or recycling. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

RECYCLED PAPER BAG

- A. A paper single-use carryout bag provided by an applicable business to a customer that meets all of the following applicable requirements:
- (1) Except as otherwise provided in this section, the recycled paper bag contains a minimum of 40% postconsumer materials, except that an eight-pound-rated or smaller recycled paper bag shall contain a minimum of 20% postconsumer material;
 - (2) Recycled paper bag should be 100% paper with no coatings or liners;
 - (3) The recycled paper bag is accepted for curbside recycling in Rockland County per the Rockland County Solid Waste Management Authority; and
 - (4) Printed on the recycled paper bag are the percentage of postconsumer material content and any of the following words and or phrases: "recyclable", "reusable", "Choose to Reuse" or "I'm Recyclable" on the outside of the bag.

REUSABLE BAG

- A. A bag with handles that is designed and manufactured for multiple reuses and meets all of the following requirements:
- (1) Is machine washable or easily cleaned or disinfected, and if made of plastic, is a minimum of at least 2.25 mils (thousandths of an inch) thick; and
 - (2) Does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal standards and regulations for packaging or reusable bags; and
 - (3) Has a minimum lifetime of 125 uses which, for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

SINGLE-USE PLASTIC CARRYOUT BAG

- A. Any bag that:
- (1) is predominantly made of plastic derived from petroleum or bio-based sources, such as corn or other plants; and
 - (2) is less than 2.25 mils (thousandths of an inch) thick; and
 - (3) is provided by an applicable business, as defined herein, to a customer at a check stand, cash register, point of sale or other location for the purpose of carrying purchased items such as food or merchandise.

B. Single-use plastic carryout bags do not include:

- (1) Bags used to:
 - (a) Package loose bulk items, such as fruit, vegetables, nuts, grains, candy, cookies, or small hardware items;
 - (b) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
 - (c) Contain or wrap flowers, potted plants, or other items where damage to or contamination of other goods placed together in the same bag may be a problem (includes paper bags to protect bottles, newspaper bags, laundry dry-cleaning bags, plastic bags around ice cream or other wet items, and small paper bags for greeting cards); or
 - (d) Contain unwrapped prepared goods or bakery goods.
- (2) Bags provided by pharmacists to contain prescription drugs; or
- (3) Newspaper bags, door-hanger bags, or laundry-dry cleaning bags.

§ 137-29 Restrictions on Single-Use Plastic Carryout Bags.

No applicable business shall provide or distribute a single-use plastic carryout bag to a customer.

§ 137-30 Regulation of distribution of reusable bags and recycled paper bags.

- A. Applicable businesses may only provide reusable bag and/or a recycled paper bag, as defined herein, to customers for the purpose of carrying purchased items such as food or merchandise.
- B. An applicable business may not charge a fee for a recycled paper.
- C. All applicable businesses shall post signs provided or approved by the Rockland County Office of Consumer Protection at or near points of sale to notify customers of the provisions of this article, which signs shall indicate to customers that applicable businesses are prohibited from providing or distributing single use plastic carryout bags to customers.
- D. Nothing in this article shall prohibit applicable businesses from encouraging and providing incentives for the use of reusable bags through education and through credits or rebates for customers that bring their own reusable bags at the point of sale for the purpose of carrying away goods.
- E. Nothing in this article shall prohibit customers from using bags of any type that they bring to the store themselves or from carrying away goods without using a bag.

§ 137-31 Enforcement

The Director of Consumer Protection and Public Advocate, in addition to any other duties and powers, is authorized to adjudicate any and all violations and levy and collect any and all penalties for violation of this article.

§ 137-32 Penalties for violations

Any applicable business that violates the provisions of this article shall receive the following penalties:

A. Per violation as follows:

- (1) a fine not to exceed \$250 for a first violation.
- (2) a fine not to exceed \$500 for a second violation within a twelve-month period.
- (3) a fine not to exceed \$1,000 for a third and each subsequent violation committed within a twelve-month period.

B. In addition to the above-referenced penalties, the Rockland County Office of Consumer Protection shall have the authority to confiscate any and all single-use plastic carryout bags from an applicable business found to have violated this article.

C. For the purpose of this section, each commercial transaction shall constitute no more than one violation.

§ 137-33 Rules and regulations

The Director of the Rockland County Office of Consumer Protection shall promulgate any rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provisions of this article.

§ 137-34. Preemption.

This article shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Rockland. The County Legislature may determine by resolution whether or not identical or substantially similar statewide legislation or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

§ 137-35. 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.

§ 137-36. Effective date.

This local law shall take effect (270) days after it is filed with the New York State Secretary of State.

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7-14-2018
Rev. 7-16-18 ASE
Rev. 12-19-18 ASE
Rev. 1-14-19 ASE
Rev. 1-22-19 ASE
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