

# Proposed Local Law Number 10 Of 2018

## County Of Ulster

### **A Local Law Promoting The Use Of Reusable Bags And Regulating The Use Of Plastic Carryout Bags And Recyclable Paper Carryout Bags**

**BE IT ENACTED**, by the Legislature of the County of Ulster, as follows:

#### **SECTION 1. TITLE.**

This Local Law shall be known by and may be cited as “The ‘Bring Your Own Bag’ (BYOBag) Act.”

#### **SECTION 2. LEGISLATIVE INTENT AND FINDINGS.**

The Ulster County Legislature hereby finds and determines that data released by the United States Environmental Protection Agency shows that between 500 billion and 1 trillion plastic bags are consumed worldwide each year.

The Ulster County Legislature further finds and determines that the production and disposal of single-use checkout bags has significant environmental impacts, including the contamination of the environment, the depletion of natural resources, use of non-renewable polluting fossil fuels, and increased clean up and disposal costs.

The Ulster County Legislature further finds and determines that most plastic bags do not biodegrade; over time, the bags break down into smaller, more toxic petro-polymers, which eventually contaminate soils and waterways affecting the environment and human health.

The Ulster County Legislature further finds and determines that it is estimated that plastic bags account for over 10% of debris that washes up on the United States coastlines.

The Ulster County Legislature further finds and determines that plastic bags can have a devastating effect on wildlife; birds can become entangled in the bags and different species of sea life can die from ingesting plastic bags, which they mistake for food.

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The Ulster County Legislature further finds and determines that U.S. retailers spend approximately \$4 billion annually to purchase disposable bags, costs that are passed on to the consumer in the form of higher prices. Municipalities are spending millions of dollars to clean up and dispose of plastic bags.

The Ulster County Legislature further finds and determines that less than 5 percent of plastic bags are recycled, in part, due to the fact that it costs more to recycle a bag than to produce a new one.

The Ulster County Legislature further finds and determines that several nations around the world have banned or are moving towards banning the distribution of plastic bags, and twelve municipalities in New York State have implemented some combination of bans and/or fees for carryout bags, including the Village of New Paltz.

The Ulster County Legislature further finds and determines that studies document that banning plastic checkout bags and placing a mandatory charge on recyclable paper checkout bags will dramatically reduce the use of both types of bags and increase the customers' use of reusable bags. "An Analysis of the Impact of Single-Use Plastic Bags" by the New York State Plastic Bag Task Force, created by Governor Cuomo in 2017, issued on January 13, 2018 supports the same.

The hybrid solution has proven effective throughout the United States and the international community in reducing plastic bag use and encouraging the switch to reusable bags. Communities such as Los Angeles, California have documented success with the ban/fee hybrid since its adoption in 2012, showing a 94% reduction in carryout bag consumption.

The Ulster County Legislature further finds and determines that reusable bags are readily available with numerous sources and vendors for such bags.

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Therefore, the purpose of this local law is to encourage consumers in Ulster County to use their own reusable bags by prohibiting retail stores in Ulster County from providing plastic carryout bags to their customers and requiring that a fee be placed on recyclable paper bags and certain other plastic bags.

**SECTION 3. DEFINITIONS**

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

“COVERED STORE” shall mean an establishment engaged in the retail sale of personal, consumer or household items including but not limited to drug stores, pharmacies, grocery stores, supermarkets, convenience stores, foodmarts, apparel stores, home center and hardware stores, stationary and office supply stores, farmers markets, open-air flea markets and food service establishments that provide carryout bags to consumers. This term does not include food service establishments located outside of grocery stores, supermarkets, convenience stores or food marts.

“CUSTOMER” means any Person obtaining goods from a Covered Store.

“FOOD SERVICE ESTABLISHMENT” shall mean a place where prepared food is provided for individual portion service directly to a Customer whether consumption occurs on or off the premises.

“PERSON” shall mean any natural person, firm, corporation, partnership or other organization or group however organized.

“SINGLE USE PLASTIC CARRYOUT BAG” shall mean a single use plastic bag less than 4 mils thick that is provided by a covered store to a customer at the point of sale and is used to carry goods from such store. “Plastic Carryout Bag” does not include (1) a bag without handles used to carry produce, meats, dry goods or other non-prepackaged food items to the point of sale within a store or market

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or to prevent such food items from coming into direct contact with other purchased items; (2) a garment bag or large plastic bag with two openings that is used to transport clothing from a clothing retailer or garment cleaner such as a dry cleaner; (3) a bag provided by a pharmacy to carry prescription drugs.

“RECYCLABLE PAPER BAG” shall mean a paper bag that (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 word “Recyclable” on the outside of the bag.

“RETAIL SALES” shall mean the transfer to a customer of goods in exchange for payment occurring in retail stores, sidewalk sales, farmers’ markets, flea markets and restaurants. The term “retail sales” does not include sales of goods at yard sales, tag sales, and other sales by residents at their homes.

“REUSABLE BAG” shall mean a bag with handles that is specifically designed and manufactured for multiple reuse that is provided by a Covered Store to its Customer at the point of sale and is capable of carrying twenty-two (22) pounds over a distance of one hundred and seventy five feet (175) for a minimum of one hundred and twenty five (125) uses and is either: (a) made of cloth or other machine washable fabric; or (b) made of durable plastic that is at least 4 mils thick.

**SECTION 4. PROHIBITION**

No Covered Store shall provide a Single Use Plastic Carryout Bag to any Customer, at the check out stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment.

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**SECTION 5. PERMITTED BAGS**

All Covered Stores may provide or make available to Customers only Recyclable Paper Bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits Customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

**SECTION 6. REGULATION OF RECYCLABLE PAPER BAGS**

- A. Any Covered Store that provides a Recyclable Paper Bag to a Customer must charge that customer a minimum of 5 cents (\$0.05) for each bag provided.
- B. All Covered Stores must indicate on the Customer receipt the number of Recyclable Paper Bags provided and the total amount charged for the bags.
- C. All monies collected by a Covered Store under this Chapter will be retained by the Covered Store.

**SECTION 7. REGULATION OF REUSABLE BAGS**

- A Covered Stores may provide their customers with reusable bags free of charge for a two-week period each year from April 15 to April 30.
- B. With the exception of the aforementioned fee exemption periods, Covered Stores that provide a Reusable Bag to their Customers must charge a minimum of 5 cents (\$0.05) for each bag provided.
- C. All Covered Stores must indicate on the Customer receipt the number of Reusable Bags provided and the total amount charged for the bags.

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D. All monies collected by a Covered Store under this Chapter will be retained by the Covered Store.

E. Each Covered Store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging Customers to use reusable bags.

**SECTION 9. ADDITIONAL OBLIGATIONS FOR COVERED STORES**

A. All Covered Stores shall post signs at or near the point of sale located in such Covered Stores to notify Customers of the Provisions of this Law, as well as the per bag charge for Recyclable Paper Bags and Reusable Bags.

B. No Covered Store may make available for sale Recyclable Paper Bags or Reusable Bags unless the amount of the sale if each such bag is separately itemized on the sales receipt.

C. No Covered Store shall provide a credit to any Person specifically for the purpose of offsetting or avoiding the carryout bag charge required by Sections 6 and 7 of this Law.

**SECTION 9. ENFORCEMENT.**

The County Executive shall designate a County Department or Departments to have primary responsibility for enforcement of this Chapter. The Director of the designated Department(s) is authorized to promulgate rules and regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

A copy of the rules and regulations will be provided to the Clerk of the Legislature before they are publically disseminated.

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**SECTION 10. VIOLATION PENALTIES**

- A. If it is determined that a violation of this Chapter has occurred, a written warning notice will be issued to the operator of a Covered Store that a violation has occurred and the potential penalties that will apply for future violations.
- B. Any Covered Store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.
- C. If a Covered Store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the store:
- (1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
  - (2) A fine not exceeding two hundred dollars (\$250.00) for the second violation after the written warning notice is given; or
  - (3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.
- D. A fine shall be imposed for each day a violation occurs or is allowed to continue.
- E. All fines collected pursuant to this Chapter shall be used to assist the County with its costs of implementing and enforcing the requirements of this Chapter and/or for public education and outreach.

**SECTION 11. APPLICABILITY.**

This law shall apply to all actions occurring on or after the effective date of this law.

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**SECTION 12. SEVERABILITY.**

If any clause, sentence, paragraph, subdivision, section, or part of this 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, 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.

**SECTION 13. REVERSE 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 Ulster. The Ulster 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.

**SECTION 14. EFFECTIVE DATE.**

This local law shall take effect April 22, 2019.