

Town of Franklin

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OFFICE OF THE TOWN ADMINISTRATOR

Memorandum

December 13, 2019

To: Town Council

From: Jamie Hellen, Town Administrator

Re: Plastic Bag Waste Reduction Discussion

The Council will have a discussion tonight on how to proceed with Plastic Bag Reduction proposals. There is no legislation for action on tonight's agenda, but rather a discussion on how to proceed from the full body.

At its December 4th, 2019 meeting, the Economic Development Subcommittee (EDC) moved a bylaw proposal, by a vote of 3-1, to the Council for discussion. I have attached a draft of the bylaw that was brought forth by various High School students three years ago and was vetted by the Town Attorney at the time. This is the current bylaw legislation the EDC voted to bring forward to the Council, notably the one change from the proposal three years ago is the title of the legislation to make it similar to the various state legislative proposals that have been filed for many years. This proposal can be amended by the Council through the regular local legislative process.

A second proposal that was discussed at the EDC meeting was to put a resolution of support for the state to fully enact a plastic bag reduction plan in front of the Council in order to show the Town's support, but also recognizing the many cities and towns have adopted different local bylaws, which has been confusing and frustrating for many of the retailer-related associations across the state. This concept discussed at the EDC meeting also recognizes the state Senate recently passed a statewide law on November 20th to ban plastic bags across Massachusetts. I have included a copy of that Senate 2410 in this packet.

If you have any additional questions please feel free to ask.

SENATE No. 2410

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

SENATE, November 18, 2019.

The committee on Senate Ways and Means to whom was referred the Senate Bill protecting the natural resources of the commonwealth (Senate, No. 459), - reported, in part, a "Bill relative to plastic bag reduction" (Senate, No. 2410). [Senators Fattman and Humason dissenting.]

For the committee,
Michael J. Rodrigues

FILED ON: 11/18/2019

SENATE No. 2410

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to plastic bag reduction.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the following chapter:-

CHAPTER 21P.

PLASTIC BAG REDUCTION.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Commissioner”, the commissioner of revenue.

“Department”, the department of environmental protection.

“Person”, an individual, partnership, trust, association, corporation, society, club, institution, organization or other entity.

“Postconsumer recycled material”, material used in a recycled paper bag that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle, and that does not comprise any material or byproduct generated from, and commonly reused within, an original manufacturing and fabrication process.

“Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable; (ii) contains either: (A) a minimum of 40 per cent postconsumer recycled materials; or (B) if not more than a so-called 8 pound paper bag, not less than 20 per cent postconsumer recycled material; and (iii) displays on the outside of the bag the words “100% Recyclable” and either : (A) “40% postconsumer recycled content”; or (B) such other per cent of postconsumer recycled material established by department regulation.

“Retail establishment”, a store or premises in which a person is engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises or the servicing of an item, directly to customers at such store or premises, including, but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including farmers markets and public markets; provided, however, that a “retail establishment” shall also include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable roadside stand used by a person from which to engage in such business directly with customers and business establishments without a storefront, including, but not limited to, a business delivering prepared foods or other food items, web-based or catalog business or delivery services used by a retail establishment; provided further, that a “retail establishment” shall include a non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type retail businesses, whether or not for profit when engaging in such activity.

“Reusable bag”, a bag that is not a single-use plastic bag with handles made of washable cloth, hemp or other fibers, fabrics or materials, or a combination thereof, designed and manufactured specifically for multiple uses.

“Serviced” or “Servicing”, a service performed to clean, repair, improve, refinish or alter an item of a customer by a person engaged in a retail business of customarily providing such services, including, but not limited to, dry cleaning and tailoring articles of clothing, jewelry repair and shoe and leather repair.

“Single-use plastic bag”, a plastic film-type bag with or without handles provided by a retail establishment to customers at its business location to carry items purchased from or serviced by the retail establishment and that is not a recycled paper bag or reusable bag.

Section 2. (a) A retail establishment shall not provide a customer with a single-use plastic bag or provide any other bag, unless specifically allowed under this chapter that is not: (i) a recycled paper bag; or (ii) a reusable bag for the customer to carry away an item purchased from or serviced by the retail establishment.

(b) Subsection (a) shall not apply to a single-use plastic bag used by a retail establishment or provided by a retail establishment to a customer for: (i) prescription medication; (ii) produce, meats, poultry, fish, bread and other food items to keep such items fresh or unsoiled; (iii) preventing frozen food items, including ice cream, from thawing; (iv) containing products or items that are saturated, wet, prone to leak or need to be immersed in a liquid; (v) containing products or items that are granular, powdery, dirty or greasy; (vi) protecting an item from damage or contamination or to protect a second item when both are carried together from the retail establishment; (vii) protecting articles of clothing on a hanger; (viii) items that contain any herbicide, pesticide, solvent, corrosive, automotive-type fluid or other chemical that can be harmful to public health, whether or not the item is prepackaged in a sealed container or bag; (ix) protecting small items from loss; (x) providing or distributing prepared foods, groceries or articles of clothing at no cost or at a substantially reduced cost by a nonprofit organization, charity or religious institution; or (xi) any item that requires the use of a certain type of bag under federal or state law.

(c) A retail establishment may make available for purchase a recycled paper bag or reusable bag; provided, however, that the price of a recycled paper bag or reusable bag shall be not less than \$0.10.

(d) A retail establishment shall be exempt from the requirements of subsections (c) and (e) if the retail establishment: (i) has not more than 3 store locations under the same ownership and each store location has less than 4,000 square feet of retail selling space and not more than 15 employees; (ii): (A) is not a food establishment under chapter 94 or any regulations promulgated pursuant to said chapter 94; or (B) provided less than 15,000 single-use plastic bags, recycled paper bags or reusable bags to consumers at the point of sale in total during the previous calendar year; and (iii) annually submits to the department an affidavit attesting that the retail establishment meets the requirements of this subsection.

Nothing in this subsection shall prohibit a retail establishment from making available for purchase a recycled paper bag or reusable bag under subsections (c).

(e) For each recycled paper bag sold, a retail establishment shall remit \$0.05 to the commissioner of revenue at the same time and in the same manner as the sales tax due to the commonwealth.

Not less than quarterly, money received by the commissioner under this section shall be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city and town in proportion to the amount of the sums received from the sales of recycled paper bags sold in the city or town. Sums received by a city or town under this section shall be used for reusable bags for residents, litter prevention, recycling education and promotion, enforcement of this chapter, cleanup programs, waste reduction, beautification and community greening. If the amount of the distribution to a city or town is \$25,000 or less, the chief executive officer as defined in section 7 of chapter 4, may expend such funds for the purposes provided in this paragraph without further appropriation by the city or town.

Notwithstanding section 21 of chapter 62C, the commissioner may make available to cities and towns any information necessary for the administration of the fee collected by a retail establishment under this section including, but not limited to, a report of the amount of fees collected in the aggregate by each city or town under this section in the preceding fiscal year and the identification of each individual retail establishment collecting fees on recycled paper bag sold under this chapter.

(3) Each even-numbered year, each city and town receiving money under this subsection shall provide a report to the department on: (i) the total amount received under this subsection; and (ii) a description of expenditures made with the money received under this subsection.

(f) Nothing in this section shall prohibit a customer from bringing a clean personal bag, made or comprised of any material, to a retail establishment to carry out items purchased from or serviced by the retail establishment.

(g) A retail establishment shall not be prohibited from selling or offering for sale to customers: (i) any package containing several bags, including, but not limited to, food bags, sandwich bags, yard waste bags, garbage bags or municipal pay-as-you-throw program trash bags; (ii) any product, merchandise or good with a protective bag, a bag to hold related accessories, parts or instruction manuals or a bag used as product packaging that the retail establishment received with such item or product from the manufacturer, distributor or vendor; or (iii) any bag that is not a retail type carryout bag that is sold or offered for sale as a product or merchandise, including, but not limited to, sports bags, handbags, equipment bags, tent bags or other bags specifically designed to protect or contain a particular item.

(h) Notwithstanding subsection (c), a retail establishment that makes available for purchase a recycled paper bag at the point of sale shall not charge a fee for the bag to a customer using an electronic benefit transfer card as payment.

Section 3. (a) Each city and town shall enforce this chapter through its enforcing authority as determined under subsection (c).

(b) A retail establishment that violates this chapter shall be subject to a warning for the first violation, a civil penalty of \$50 for the second violation and a civil penalty of \$100 for a third or subsequent violation. Each day a retail establishment is in violation of this chapter shall be considered a separate violation.

Each city and town shall dispose of a civil violation under this subsection by the non-criminal method of disposition procedures contained in section 21D of chapter 40 without an enabling ordinance or bylaw.

(c) Each city and town shall designate the municipal board, department or official responsible for the local enforcement of this chapter and for the collection of money resulting from civil penalties assessed for violations of this chapter. A city or town shall retain any civil penalties collected for such violations.

Section 4. The department shall establish standards for reusable bags including, but not limited to, the minimum amount of weight, number of uses and the minimum amount of recycled material required in reusable carryout bags.

The department may through regulation: (i) increase or adjust the postconsumer recycled material percentage in a recycled paper bag; and (ii) allow a retail establishment to use other non-plastic type carryout bags that are recyclable or compostable.

The department shall, when adopting or amending any standard for an allowed recycled or reusable bag under this chapter, consult with the department of public health on issues relating to food safety and the materials used to produce the bags.

Section 5. This chapter shall preempt any limitation by any political subdivision of the commonwealth regarding the use, sale or distribution of carryout bags, or other bags, by a retail establishment to the extent that it is regulated or covered by this chapter.

No political subdivision shall require a retail establishment to charge greater than \$0.10 for a recycled paper bag made available for purchase.

Any municipal ordinance, by-law or regulation, including a regulation of a board of health, that is inconsistent with this chapter shall be null and void.

Section 6. Nothing in this chapter shall prohibit or limit the department's authority to enforce this chapter.

SECTION 2. Subsection (b) of section 21 of chapter 62C of the General Laws, as amended by section 15 of chapter 5 of the acts of 2019, is hereby further amended by adding the following clause:-

(32) the disclosure of information necessary for administration of the recycled paper bag fee imposed under section 2 of chapter 21P.

SECTION 3. Subsection (d) of section 2 of chapter 21P is hereby repealed.

SECTION 4. Section 1 shall take effect 6 months after passage of this act.

SECTION 5. Section 3 shall take effect on January 1, 2022.



SPONSOR: Administration

**TOWN OF FRANKLIN
BYLAW AMENDMENT 20-XX
NEW CHAPTER 130, PLASTIC CHECKOUT
BAG REDUCTION BYLAW**

A BYLAW TO AMEND THE CODE OF THE TOWN OF FRANKLIN BY ADDING A NEW CHAPTER: CHAPTER 130 PLASTIC CHECKOUT BAG REDUCTION.

Be it enacted by the Franklin Town Council that Chapter 130, Plastic Checkout Bag Reduction is added in its entirety as follows to the Code of the Town of Franklin.

**Chapter 130 Plastic Checkout Bag Reduction
§130-1 Purpose and Intent.**

Plastic bags are an environmental nuisance, adversely affect public health, and impair the overall quality of life for the Town's residents and visitors.

Because plastic bags are lightweight, they can easily become airborne even when properly disposed of, littering waterways, state and private forests, bodies of water, roadsides and sidewalks. They clog storm drainage systems, contribute to aquatic and terrestrial pollution, and detract from the natural beauty of the Town for visitors and residents alike.

Plastic bags photodegrade, disintegrating into minute particles which absorb toxins and pose a threat to riparian and aquatic environments, contaminating the food chain, as well as water and soil. They are also detrimental to wildlife, killing tens of thousands of birds, aquatic and terrestrial organisms each year through ingestion and entanglement.

The vast majority of plastic bags are not recycled and recycling is not available through our Town's recycling program. Their disposal adds to the Town's waste management expense, both through the cost of disposing the bags through private firms and due to their contamination of the single-stream recycling system.

Plastic bag ordinances have proven to be effective in reducing plastic bag consumption and litter and are part of a growing global movement towards sustainability. Statewide, all the proposed bans have been passed and are in the process of being enforced. The Town is committed to protecting the environment and the public health, safety, and welfare of its citizens. The goal of this bylaw is to reduce the common use of plastic checkout bags and to encourage the use of reusable bags by consumers, thereby reducing local land and aquatic pollution, advancing solid waste reduction, maintain the Town's exterior beauty and improving the quality of life for the citizens of the Town.

§130-2 Bylaw Definitions.

Checkout Bag: A carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or checkout area of the store.

Grocery Store: A retail establishment where more than fifty percent (50%) of the gross floor area is devoted to the sale of food products for home preparation and consumption, which typically also offers home care and personal care products.

Plastic Checkout Bag: Thin-film, single-use plastic bags typically with plastic handles, with a thickness of 4.0 mils or less, intended for single-use transport of purchased products.

Retail Store: An establishment that offers the sale and display of merchandise within a building.

Reusable Checkout Bag: A bag, with handles, that is specifically designed for multiple use and is made of thick plastic, cloth, fabric or other durable materials.

§130-3 Use Regulations.

No retail or grocery store within the Town of Franklin shall provide a plastic checkout bag to any customer.

Customers are encouraged to bring their own reusable or biodegradable shopping bags to stores. Retail or grocery stores are strongly encouraged to make reusable checkout bags available for sale to customers at a reasonable price.

Thin-film plastic bags used to contain dry cleaning, newspapers, produce, meat, fresh produce, bulk foods, wet items and other similar merchandise, typically without handle, are still permissible.

§130-4 Violations and Enforcement.

Any retail or grocery store violating the prohibition contained in Section 130-3 of this bylaw shall be subject to a fine as follows:

First Offense: Warning
Second Offense: \$ 50.00
Third and Subsequent
Offenses: \$100.00

Each day that a violation continues shall be treated as a separate offense.

This bylaw may be enforced by the Town Administrator or his designee, the Franklin Police Department, the Building Commissioner and Building Inspectors, and the Board of Health Director and Agent(s).

§130-5 Effective Date.

This bylaw shall take effect on and after _____.

DATED: _____, 2020

VOTED:

UNANIMOUS: _____

YES: _____ **NO:** _____

ABSTAIN: _____

ABSENT: _____

RECUSED: _____

A True Record Attest:

Teresa M. Burr, CMC
Town Clerk

Glenn Jones, Clerk
Franklin Town Council