

# TOWNSHIP OF MAPLEWOOD



## ORDINANCE

# 2946-19

### **AN ORDINANCE TO PROHIBIT THE USE OF PLASTIC BAGS AND REGULATE THE USE OF PAPER BAGS BY RETAIL ESTABLISHMENTS WITHIN THE TOWNSHIP OF MAPLEWOOD**

#### *"Interpretive Statement"*

*The purpose of this Ordinance is to reduce the use of disposable paper and plastic non-reusable checkout bags by retail establishments in the Township of Maplewood.*

**WHEREAS**, on average, one person uses 500 single-use disposable bags per year, 4 billion single use shopping bags are used annually in New Jersey, and 102 billion are used nationwide; and

**WHEREAS**, windblown plastic bags degrade our land and waterways, and 80% of the plastic and trash that finds its way into our oceans comes from the land; and

**WHEREAS**, 12 million barrels of oil are used annually to make the plastic bags that Americans use; and

**WHEREAS**, according to the EPA, seabirds, fish, and other marine and land-based animals mistake plastic for food, while others can become entangled in the trash, leading to exhaustion, starvation, and eventual death; and

**WHEREAS**, plastic breaks down into microplastics that measure 5 millimeters or less, which are ingested by shrimp, plankton, fish, birds, turtles, and other sea animals. Microplastics absorb toxic chemicals, harms marine life, and can be consumed by humans via seafood and potable water; and

**WHEREAS**, it is beyond dispute that the use of single-use, plastic carryout bags has a severe and negative environmental impact on the local and global environment as a result of the greenhouse gas emissions emitted to produce such bags, the land-based and ocean-based pollution created, the hazards posed to wildlife, the hazards posed to sources of water for humans, and the negative impact on the ecosystem and food chain as a whole; and

**WHEREAS**, very few single-use carryout bags are actually recycled (it is estimated that less than 5% of all plastic bags are actually recycled and some estimates are as low as 1%); and

WHEREAS, the Township of Maplewood taxpayers currently bear the costs associated with the negative effects of plastic, single-use carryout bags on the solid waste stream, drainage, litter, and the negative consequences of the foregoing environmental impacts; and

WHEREAS, all single use carry-out bags are wasteful, and while paper carry-out bags present adverse impacts on the environment, these impacts are less so than single use plastic carry-out bags because they naturally decompose in the environment while plastic bags degrade at a much slower rate and release toxic materials during that process as well as pollute waterways; and

WHEREAS, Maplewood residents understand that reusable bags consume far less energy and natural resources than single use plastic carry-out bags and paper carry out bags; and

WHEREAS, the Township of Maplewood desires to reduce the number of disposable paper and plastic checkout bags that are being burned, used, discarded and littered and to promote the use of reusable checkout bags by retail establishments located within the Township of Maplewood; and

WHEREAS, the Township Committee of the Township of Maplewood finds that the reduction in the use of disposable paper and plastic checkout bags by retail establishments within the Township of Maplewood promotes a legitimate public purpose; and

WHEREAS, in accordance with N.J.S.A. 40:48-2, a municipality in New Jersey may enact such ordinances "as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants" and regulating the use of plastic bags and paper bags will preserve the public health, safety, and welfare of the municipality.

NOW, THEREFORE, be it Ordained by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey as follows:

**FIRST: DEFINITIONS**

The following definitions apply to this Ordinance:

- (1) The term "customer" means any person purchasing goods or services from a retail establishment.
- (2) The term "operator" means the person in control of, or having the responsibility for, the operation of a retail establishment, which may include, but is not limited to, the owner of the retail establishment.
- (3) The term "person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- (4) The term "single use plastic carry-out bag" means any bag made predominantly of plastic that is not made or intended for reuse that is provided by an operator of a retail establishment to a customer at the point of sale. This definition specifically exempts the following from the category of "Single Use Plastic Carry-out Bag":
  - (a) bags provided by operators and used by consumers inside retail establishments to:

- (1) package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
- (2) contain or wrap frozen foods, meat, or fish, whether packaged or not;
- (3) contain or wrap flowers, potted plants, or other items where dampness may be an issue;
- (4) contain unwrapped prepared foods or bakery goods; or
- (5) pharmacy prescription bags; or
- (6) function as "produce bags" or "product bags," which shall mean very thin bags without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a retail establishment or, for reasons of public health and safety, to prevent such food items from coming into direct contact with other purchased items.

(b) newspaper bags, door-hanger bags, laundry and/or dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as food storage bags, garbage bags, yard waste bags, or pet waste bags.

- (5) The term "retail establishment" means any store or commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer and is located within or doing business within the geographical limits of the Township of Maplewood. Retail establishments include: a business establishment that generates a sales or use-tax; a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other commercial entity engaged in the retail sale of a limited line of goods that include milk, bread, soda, and snack foods; a public eating establishment (i.e., a restaurant, take-out food establishment, or any other business that prepares and sells prepared food to be eaten on or off its premises); and business establishment that sells clothing, a hardware store, or any other non-perishable goods.

**SECOND: SINGLE USE PLASTIC CARRY-OUT BAGS PROHIBITED EFFECTIVE JUNE 1ST**

Effective June 1, 2019, no retail establishment shall provide to any customer, or to any person, a single use plastic carry-out bag, as defined in above. This prohibition applies to bags provided for the purpose of carrying goods away from the point of sale and does not apply to product bags or to produce bags used to carry produce within the retail establishment to the point of sale. The prohibition applies to single use plastic carry-out bags used for take-out deliveries from retail establishments within the Township of Maplewood. The point of sale in such transactions is deemed to be at the retail establishment, regardless of where payment for the transaction physically occurs.

Effective June 1, 2019 through July 31, 2019, retail establishments may provide to any customer, upon request of the customer, a paper bag without charge.

**THIRD: PAPER BAGS SUBJECT TO MANDATORY FEE EFFECTIVE AUGUST 1ST**

Effective August 1, 2019, all retail establishments shall make available to customers, upon request by the customer, for a fee of .05 (five cents), paper bags for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this Ordinance. The fee charged shall be reflected in the sales receipt and shall be subject to applicable tax. The fee charged shall be retained by the retail establishment.

#### **FOURTH: PROMOTION OF REUSABLE BAGS**

- (1) Each retail establishment shall be strongly encouraged to educate its staff to promote the use of reusable bags and to post signs encouraging customers to use reusable bags rather than paper carry-out bags.
- (2) Each retail establishment shall be strongly encouraged to educate its staff to make inquiry to a customer whether the customer has supplied his/her own reusable bags instead of offering the paper carry-out bags to the customer.
- (3) Nothing in this Ordinance prohibits customers from using bags of any type that they choose to bring to retail establishments themselves, in lieu of using bags available for a fee from the retail establishment, or from carrying away goods that are not placed in a bag.
- (4) Nothing in this Ordinance shall prohibit a retail establishment from providing a credit to a customer who has supplied his/her own bags.
- (5) Nothing in this Ordinance shall prohibit a retail establishment from offering for sale reusable bags, including those made of cloth or other washable fabric with handles that are specifically designed and manufactured for multiple reuse, for a fee of .05 (five cents) or greater.

#### **FIFTH: EXEMPT CUSTOMERS**

- (1) All retail establishments must provide at the point of sale, free of charge, paper bags to any customer who participates in, or is a beneficiary of, any United States government federal welfare program, including but not limited to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or any local or County welfare assistance program, or any New Jersey State welfare program, including but not limited to the New Jersey Supplemental Nutritional Assistance Program (SNAP) or the New Jersey State Supplemental Security Income Program (SSI).
- (2) All retail establishments must provide at the point of sale, free of charge, paper bags to any customer who is aged sixty-five (65) and over upon request of the customer with valid proof of age.

#### **SIXTH: ENFORCEMENT AND VIOLATION PENALTY**

- (1) The Director of the Department of Community Development, or his/her designee, has the responsibility for enforcement of this Ordinance and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines.

- (2) Any retail establishment that violates or fails to comply with any of the requirements of this Ordinance after an initial written warning notice has been issued for that violation shall be liable for an infraction.
- (3) If a retail establishment has subsequent violations of this Ordinance after the issuance of an initial written warning notice of a violation, the following penalties will be imposed and shall be payable by the operator of the retail establishment: (a) a fine in the amount of fifty dollars (\$50.00) for the first violation after the written warning notice is given; (b) a fine in the amount of one hundred dollars (\$100.00) for the second violation after the written warning notice is given and the fine for the first violation has been imposed; or (c) a fine in the amount of two hundred dollars (\$200.00) for the third and any subsequent violations after the written warning notice is given and fines for the first and second violations have been imposed.
- (4) Fines shall be imposed for each day a violation occurs or is allowed to continue. A retail establishment shall not be subject to more than one fine for violations or continuing violations that occur on the same day.
- (5) Appeal of a written warning notice or fine shall be conducted pursuant to standard municipal regulations and procedures concerning appeals already adopted by the Township of Maplewood.

**SEVENTH: NO CONFLICT WITH FEDERAL OR STATE LAW**

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

**EIGHTH: REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

**NINTH: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**TENTH: EFFECTIVE DATE**

This Ordinance shall take effect immediately after passage and publication as provided by law.

**ELEVENTH: CODIFICATION**

This ordinance shall be a part of the Code of the Township of Maplewood as though codified and fully set forth therein. The Township Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

**PUBLIC NOTICE** is hereby given that the foregoing proposed Ordinance was introduced and read by title at a meeting of the Township Committee of the Township of Maplewood, held on February 19, 2019, and that the Township Committee met again on March 5, 2019, at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Township Committee held a hearing and proceeded to consider the said Ordinance on final reading and final passage.

ELIZABETH J. FRITZEN, R.M.C.  
Township Clerk