

A. OLD BUSINESS (Public hearing) (Roll call)

BARNSTABLE TOWN COUNCIL

ITEM# 2016-010
INTRO: 08/13/15, 09/03/15

2016-010 AMENDMENT TO THE CODE OF THE TOWN OF BARNSTABLE GENERAL ORDINANCES BY ADDING CHAPTER 195 SINGLE USE PLASTIC BAGS AND AMENDMENT TO “CHAPTER 1, ARTICLE I NONCRIMINAL ENFORCEMENT OF VIOLATIONS”

ORDERED: That the General Ordinances of the Code of the Town of Barnstable be amended by adding the following Chapter 195 and by amending Chapter 1, Article I, Non-criminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 195.

“Chapter 195”

SINGLE-USE PLASTIC CARRYOUT BAGS

§ 195-1 Purpose and Intent.

The production and use of single-use plastic checkout bags have significant impacts on the marine and land environment of all coastal communities, including but not limited to: contributing to the potential death of marine and terrestrial animals through ingestion and entanglement; contributing to pollution of the land and coastal environment; clogging our storm drainage systems; creating a burden on our solid waste collection and recycling efforts; and requiring the use of millions of barrels of non-renewable, polluting, fossil fuel nationally for their manufacture. Therefore, the purpose of this chapter is to phase out the use of single-use plastic checkout bags by all establishments as defined herein in the Town of Barnstable over a period of 12 months from the effective date of this chapter.

§ 195-2 Definitions.

For purposes of this chapter, the following words shall have the following meanings.

CARRYOUT BAG - Any bag that is provided at the point of sale to a customer of an establishment for use to transport or carry away purchases, such as merchandise, goods or food, except as otherwise exempted under §195-4.

CUSTOMER - Any person purchasing goods articles, food or personal services from an establishment.

ENFORCING PERSON – Those persons listed in §1-2(A), non-criminal enforcement of ordinances, rules and regulations, of the General Ordinances of the Code of the Town of Barnstable, as further delegated by the time of taking effect pursuant to §195-6.

ESTABLISHMENT - Any business selling goods, articles, food or personal services to the public, including public eating establishments and take-out restaurants.

OPERATOR - The person in control of, or having the responsibility for, the operation of an establishment, which may include, but is not limited to, the owner.

PERSON - Any natural person, firm, corporation, partnership, or other organization or group however organized.

PLASTIC BAG - Any bag made of plastic derived from either petroleum, ethylene derived from natural gas, polyethylene, polyethylene terephthalate, polyvinyl chloride, polypropylene, or nylon.

PRODUCT BAG - A bag integrated into the packaging of the product.

REUSABLE BAG - A bag specifically designed and manufactured for long term multiple reuses made of cloth, fabric or other durable washable materials.

SINGLE-USE PLASTIC BAG means a plastic carryout bag with integral handles and thickness less than 3.0 mils.

§ 195-3 Plastic Bag Use Regulation.

Single-use plastic carryout bags shall not be sold, provided, or distributed to a customer or any other person by any person, owner, or operator of any establishment within the Town of Barnstable.

§ 195-4 Exemptions and Alternatives.

A. The following are exempt and not subject to the provisions of this chapter.

(1) Bags used by customers inside establishments to:

- (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
- (b) contain or wrap frozen foods, meat, or fish, whether packaged or not; or
- (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem;

(2) Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage, waste, pet waste or yard waste.

(3) Product bags.

B. Nothing in this chapter prohibits customers from using bags of any type that they bring to the grocery store, food provider, or other establishment themselves or from carrying away goods that are not placed in a bag. Customers are encouraged to bring their own reusable bags to the aforesaid establishments.

C. Establishments may and are strongly encouraged to distribute paper bags, reusable bags and boxes available to customers with or without charge and educate their staff to promote reusable bags and post signs encouraging customers to use washable reusable bags.

D. The Town Manager or designee may prior to the effective date of this ordinance engage in any outreach process to establishments concerning this ordinance and exempt an establishment from the requirements of § 195-3 for a period of not more than one year upon the establishment's showing, in writing, that this code would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing and the Town Manager's decision shall be final.

§ 195-5 Provision for Reusable Bag at No Cost.

Notwithstanding the provisions of § 195-4, an establishment shall provide a reusable bag at no cost upon the request of a customer who uses a voucher issued under the Special Supplemental Food Program for Women, Infant and Children (WIC) pursuant to M.G.L. c. 111.

§ 195-6 Time of Taking Effect.

In addition to the exemption provided in §195-4(D), in order to further assist existing establishments in complying with this ordinance by phasing out the use of single-use plastic carryout bags over a period of 12 months from the effective date this ordinance, this ordinance shall take effect after 12 months from the expiration of thirty days from the date of its adoption.

§ 195-7 Inspection and Enforcement.

Any enforcing person shall have the right to enter any establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter. Upon finding a violation of this chapter an enforcing person shall issue a written warning notice to the operator of the establishment that a violation has occurred and the potential penalties that will apply for future violations.

§ 195-8 Violations and Penalties.

Any establishment that violates or fails to comply with this chapter shall be subject to the following penalties to be enforced in law or equity by any means, including without limitation non-criminal disposition pursuant to G. L. c. 40 § 21D, provided that no more than one (1) penalty after written warning shall be imposed upon an establishment within a seven (7) day calendar day period:

First Offense: written warning.

Second Offense: \$100.00 fine.

Third and Subsequent Offense: \$200.00 and the Town may in its discretion publish the fine on its web site after the third and subsequent offense.

§ 195-9 Severability.

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.”

SECTION 2: by amending section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances by adding after “Ch.192, Art. II Signs \$100” the following in the respective columns: “Ch.195 Single-Use Plastic Carryout Bags First Offense warning, Second Offense \$100.00 fine, Third and Subsequent Offense \$200.00 fine” in the respective columns.

SPONSOR: Councilor Paul Hebert

DATE	ACTION TAKEN
<u>08/13/15</u>	<u>Referred to Public hearing 09/03/15</u>

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Move/Vote

PLEASE BE AWARE THAT THIS HAS NOT
GONE BEFORE THE BARNSTABLE TOWN
COUNCIL FOR A FINAL VOTE, THE FINAL
VOTE IS ON SEPTEMBER 3, 2015

BARNSTABLE TOWN COUNCIL

ITEM# 2016-010
INTRO: 08/13/15, 09/03/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Councilor Paul Hebert
DATE: August 13, 2015
SUBJECT: Order amending the code of the Town of Barnstable General Ordinances by adding Chapter 195 Single Use Plastic Bags

RATIONALE: I am sponsoring this ordinance because I believe, as a marine community; we have a special responsibility to reduce the harmful impacts of single use plastic bags. We know these bags contribute to the deaths of many forms of marine life and they are one of the most prevalent pieces of trash found on beaches worldwide, including our beaches. Because of their inherent properties, they float through the air and make their way into rivers and streams, and eventually into the ocean where they degrade into smaller and smaller pieces, which are consumed by fish or end up as part of the great “garbage patches” floating in the world’s oceans. Recycling plastic bags is not the answer. The evidence suggests that less than ten percent of single use plastic bags are recycled, and the bags frequently cause problems and equipment breakdowns in recycling facilities. We know this ordinance will not completely solve our litter issues, but it will eliminate the air borne trash that is the source of so many problems. We are not leaders in this effort but rather we are adding both our voice and our action to those communities in Massachusetts and particularly to other Towns on Cape Cod. We have everything to gain by taking such action and a great deal to lose in our failure to act. We cannot separate our environment from our health, economic sustainability today and for the future. While we may be initially motivated by the unsightly plastic bags in our trees, bushes, streets, beaches and parking lots, it is the indisputable negative environmental impact that causes us to join our neighboring communities in promoting this ordinance. It is for the love of our families and fellow citizens’ health, quality of life, economic wellbeing and concern for future generations that we take action today. Let us stand united in our determination to seize this opportunity to accept perhaps a small inconvenience for the sake of the greater good.

In the words of Peter Drucker, “Doing things right is management. Doing the right thing is leadership.” Let us do the right thing for us all and let us manage this well.

FISCAL IMPACT: None

TOWN MANAGER RECOMMENDATION: The Town Manager recommends this Ordinance

STAFF ASSISTANCE: Ruth Weil, Town Attorney; David Houghton, First Assistant, Town Attorney