

2017-9  
**ORDINANCE OF THE  
TOWN OF MIDDLETOWN**

**AN ORDINANCE AMENDING THE TOWN CODE  
OF THE TOWN OF MIDDLETOWN**

AN ORDINANCE IN AMENDMENT TO TITLE IX GENERAL REGULATIONS, CHAPTER 92B OF THE TOWN CODE OF THE TOWN OF MIDDLETOWN ENTITLED "PLASTIC BAG REGULATIONS"

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

FIRST: Title IX is hereby amended by adding the following new chapter:

**Section 92B Plastic Bag Regulations**

**Section**

- 92B (1) Legislative Findings and Intent**
- 92B (2) Purpose**
- 92B (3) Definitions**
- 92B (4) Prohibited Acts**
- 92B (5) Exemptions**
- 92B (6) Enforcement; Violations and Penalties**
- 92B (7) Hardship Variance**
- 92B (8) Effective Date**

**1. LEGISLATIVE FINDINGS AND INTENT:**

(a) The Town Council has the authority under Article 13 of the Rhode Island Constitution and the Middletown Town Charter to regulate issues of solid waste, litter and pollution as a local concern.

(b) The production, use and disposal of plastic checkout bags, which are commonly not recycled, has been shown to have significant detrimental impacts on the environment, including but not limited to contributing to pollution of the terrestrial and coastal environment, clogging storm water drainage systems, and contributing to the injury and death of terrestrial and marine life through ingestion and entanglement.

(c) The manufacture, transport and recycling of plastic checkout bags requires substantial energy consumption and contributes to greenhouse gases.

(d) Plastic checkout bags create a burden to solid waste collection and recycling facilities.

(e) Prohibiting the use of Plastic checkout bags is necessary to protect the environment and the public health, safety, and welfare of all residents and visitors.

## 2. PURPOSE:

The purpose of the article is to improve the environment in and around Town of Middletown Rhode Island and the health, safety, and welfare of its residents by reducing the number of plastic and paper bags being used, encouraging the use and sale of reusable checkout bags and banning the use of plastic bags for retail checkout of goods.

## 3. DEFINITIONS:

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

**CARRYOUT BAG** means a bag provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases.

**PLASTIC CARRYOUT BAG** means any plastic carry-out bag that is provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases. "Plastic Carryout Bag" does not include plastic barrier bags or double-opening plastic bags, as defined herein, or plastic bags measuring larger than 28 inches by 36 inches.

**DOUBLE-OPENING PLASTIC BAGS** means any thin plastic bag with a double opening (top and bottom) to protect clothing or other items for transport.

**PLASTIC BARRIER BAG** means any thin plastic bag with a single opening used to:

(a) Transport fruit, vegetables, nuts, grains, small hardware items, or other items selected by customers to the point of sale;

(b) Contain or wrap fresh or frozen foods, meat, or fish, whether prepackaged or not;

(c) Contain or wrap flowers, potted plants, or other items where damage to a good or contamination of other goods placed together in the same bag may be a problem; or

(d) Contain unwrapped prepared foods or bakery goods.

**RECYCLABLE PAPER BAG** means a paper bag that is fully recyclable overall and contains a minimum of 40% post-consumer recycled content and contains no old growth fiber. The bag should display the words "Reusable" and "Recyclable" or the universal recycling logo on the outside of the bag in green lettering at least one inch in size.

**BUSINESS ESTABLISHMENT** means any commercial enterprise that provides carryout bags to its customers, including sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity, and includes all employees of the business and any independent contractors associated with the business. "Business Establishment" does not include sales of goods at yard sales, tag sales, other sales by residents at their homes, and sales by nonprofit organizations.

**REUSABLE BAG** means a bag with handles that is specifically designed and manufactured for multiple reuse and is made primarily of cloth or other nonwoven textile or is constructed of multiple layers for insulation.

## 4. PROHIBITED ACTS:

(a) No business establishment shall provide or make available any plastic carryout bag at the point of sale.

(b) All business establishments that provide plastic barrier bags or double opening bags shall offer a recycling opportunity onsite for the recycling of any plastic bags or clean plastic bag film as defined by the Rhode Island Resource Recovery Corporation RESTORE program.

(c) Nothing in this section shall preclude business establishments from making reusable bags or recyclable paper bags available ~~\*for sale to customers\*~~, by sale or otherwise.

## 5. EXEMPTIONS:

This ordinance does not apply to:

(a) Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;

(b) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities, provided that the bags are recyclable within the State's recycling program; \*and,

~~(c) \*Bags used by restaurants to take away prepared food, provided that the bags are recyclable within the State's recycling program; and~~

~~\*(d) Plastic barrier bags, double opening plastic bags and bags used by a consumer inside a business establishment to: (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items; (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged; (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; (4) Contain unwrapped prepared foods or bakery goods; or (5) bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.~~

## 6. ENFORCEMENT; VIOLATIONS AND PENALTIES:

This ordinance shall be enforced by the Police Department, or any other Town Department designated by the Town Administrator. Any person who violates any of the provisions of this ordinance shall be subject to the following penalties:

(a) For a first offense, the person charged with a violation of this ordinance shall be served with a warning letter by delivering it to him or her personally, or by posting a copy upon a conspicuous portion of the retail sales establishment and sending a copy of the same by certified mail to the person to whom the notice is directed. The warning letter shall inform the person charged of the nature of the violation and that it must be corrected within fourteen (14) \*days of the date of the letter, and shall include a copy of this ordinance.

(b) For a second offense more than fourteen (14) days after service of a warning letter, a fine of \$150. The person charged shall, for a second offense, be given the opportunity to pay the fine assessed by mail, which shall be indicated on the summons issued by the charging officer. Should the alleged violator elect not to pay the fine assessed by mail, said person shall be entitled to a hearing before the Municipal Court.

(c) For a third or subsequent offense, a fine of \$300.00, and a hearing before the Municipal Court shall be required.

(d) Each occurrence of a violation more than fourteen (14) days after service of a warning letter, and each day that such violation continues, shall constitute a separate violation and may be cited as such.

**7. HARDSHIP VARIANCE:**

The Town Administrator may grant a variance from the requirements of this article only after determining that:

(a) Application of this article would cause undue hardship based upon unique circumstances; or,

(b) Application of this article would deprive a person or business of a legally protected right.

(c) The requested variance shall be submitted on the towns prescribed forms.

(d) Any variance granted under this section must be the minimum variance necessary to address the hardship.

(e) The Administrator shall prepare a written report of findings to support the grant or denial of the Variance.

**8. EFFECTIVE DATE:**

This ordinance shall take effect on passage \_\_\_\_\_, and its provisions shall supersede any inconsistent or contrary provision in any other ordinance\*; provided however, that enforcement shall be stayed until November 1, 2017.

\* Amended by Council May 1, 2017.

MAY - 1 2017

READ AND ADOPTED IN COUNCIL

*Wendy J.W. Marshall*  
WENDY J.W. MARSHALL, CMC  
TOWN CLERK