

**ORDINANCE NO. 2020-03
BOROUGH OF LEONIA
COUNTY OF BERGEN**

**AN ORDINANCE AMENDING CHAPTER 243 “SOLID WASTE” OF THE
CODE OF THE BOROUGH OF LEONIA BY ADDING ARTICLE IV
“SINGLE-USE BAG REDUCTION”**

WHEREAS, the Mayor and Council of the Borough of Leonia recognize the need to add a new chapter to the Borough Ordinance to include a new section entitled “Single-Use Bag Reduction”; and

WHEREAS, the Mayor and Council of the Borough of Leonia desire to reduce the number of disposable carryout bags that are being used, discarded and littered and to promote the use of reusable carryout bags by retail establishments located within the Borough in order to curb litter on the streets, protect our marine environment and waterways, and reduce greenhouse gas emissions and solid waste.

BE IT ORDAINED by the Mayor and Council of the Borough of Leonia, County of Bergen, State of New Jersey, as follows:

Section 1.

Chapter 243 of the Code of the Borough of Leonia, “Solid Waste” is amended by adding Article IV “Single-Use Bag Reduction”, as follows:

ARTICLE I.

A. DEFINITIONS

Food Service Establishment: Any establishment which serves made-to-order food or beverages for dine-in, takeout, or delivery, including food trucks and mobile carts.

Goods and Products: Things and items that are prepared and made to be sold, including, but not limited to, clothing, groceries, prepared food, groceries, meat, dairy, beverages, merchandise, books, jewelry, alcohol, tobacco products, toys, and any and all other things and items sold at retail by businesses and stores.

Produce Bag or Product Bag: Any bag without handles that is used exclusively to segregate produce, meats, other food items, and merchandise to carry them inside the store to the point of sale or to prevent such items from coming into direct contact with other purchased items, where such contact could damage or contaminate other food or merchandise when placed together inside of a Reusable Bag or Recyclable Paper Carry-Out Bag.

Property Maintenance Officer: The individual charged with the enforcement of this section.

Recyclable Paper Carry-Out Bag: A recyclable paper carry-out bag is a paper bag that is one hundred percent (100%) recyclable overall, contains a minimum of forty percent (40%) postconsumer recycled material, displays the words “recyclable” and “made from at least 40% postconsumer recycled content” in a highly visible manner on the outside of the bag, and is compostable.

Retail: The sale of goods and products for use and/or consumption.

Retail Establishment or Retail Store: For the purpose of this section, retail establishment shall mean any commercial establishment, whether or not operated for profit, including, but not limited to, mercantile establishment or store that engages in the sale of goods and products. The definition includes, but is not limited to, pharmacies, supermarkets, grocery stores, convenience stores, clothing stores, dry cleaners, food marts, Food Service Establishments, seasonal and temporary businesses, home based businesses, indoor or outdoor markets, and street fairs, which utilize plastic carry-out bags for the conveyance of Goods and Products.

Reusable Bag: A bag that is designed and manufactured to withstand repeated uses, is machine washable or made from a material that can be cleaned and disinfected regularly and meets the following criteria:

- (a) Has a minimum lifetime of 125 uses;
- (b) Is capable of carrying a minimum of 22 pounds; and
- (c) Does not contain lead, cadmium, or any other heavy metal in toxic amounts (as defined by applicable state and federal standards and regulations).

If the bag is made from plastic, it is at least 2.25 mil thick, has handles, contains a minimum of 20% post-consumer recycled content, and clearly indicates on the outside that it is “reusable” or “reusable and recyclable.”

A Retail Establishment may rely on a manufacturer’s, vendor’s, or distributor’s representations regarding bag characteristics.

Single-Use Plastic Carry-Out Bag: The term “single-use plastic carry-out bag” means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, that is provided by an operator of a retail establishment or store to a customer at the point of sale. The term also includes bags that are compostable or biodegradable, but does not include Reusable Bags, Produce Bags or Product Bags (as defined above). 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 or

stores to:

- (i) Package bulk items, such as fruit, vegetables, nuts, grains, candies, or small hardware items;
 - (ii) Contain or wrap frozen foods, meats or fish, whether packaged or not;
 - (iii) Contain or wrap flowers, potted plants, or other items where dampness may be an issue;
 - (iv) Contain unwrapped prepared foods or bakery goods; or
 - (v) Contain prescription drugs.
- (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.

B. REGULATION OF SINGLE-USE PLASTIC CARRY-OUT BAGS

No retail establishment or store shall provide to any customer a single-use plastic carry-out bag provided for the purpose of transporting goods out of the business or store at the check stand, cash register, point of sale, or other point of departure, except as otherwise provided in this Chapter.

These prohibitions apply to single-use plastic carry-out bags used for take-out and/or deliveries from retail establishments or stores within the Borough of Leonia. The point of sale in such transactions is deemed to be at the Retail Establishment, regardless of where payment for the transaction physically occurs.

C. ALLOWING REUSABLE AND RECYCLABLE PAPER CARRY-OUT BAGS/FEEES

All Retail Establishments may make available to customers reusable bags and recyclable paper carry-out bags for the purpose of carrying goods or other materials away from the point of sale, subject to the provisions of this chapter. The fee (if any) charged shall be reflected in the sales receipt.

Nothing in this chapter prohibits customers from using bags of any type that they choose to bring to retail establishments or stores themselves, in lieu of using bags available for a fee from the retail establishment or store, or from carrying away purchased goods that are not placed in a bag.

D. FEES FOR PROVIDING REUSABLE BAGS AND RECYCLABLE PAPER CARRY-OUT BAGS

All retail establishments or stores may make Reusable Bags and/or Recyclable Paper Carry-out Bags available to customers upon request for a fee of at least \$0.10 per such bag if

customers choose not to bring their own Reusable Bags. Any fee shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the “Checkout Bag Charge” or use similar identifying language. Small recyclable papers bags without handles and measuring 8 inches by 16 inches or less are exempt from any fee.

All monies collected by Retail Establishments under this chapter shall be retained by the store.

E. USE OF REUSABLE BAGS ENCOURAGED

A Retail Establishment may choose, in its discretion, to provide a credit to customers that choose to bring their own Recyclable Paper Carry-Out Bags or Reusable Bags.

Each Retail Establishment is strongly encouraged to educate its staff to promote the use of Recyclable Paper Carry-Out Bags or Reusable Bags, and to post signs encouraging customers to bring their own Recyclable Paper Carry-Out Bags or Reusable Bags.

Each retail establishment or store that provides takeout or delivery services is encouraged to provide customers with a choice to avoid use of Single-Use Plastic Carry-Out Bag.

F. EXEMPT CUSTOMERS

All Retail Establishments must provide at the point of sale, free of charge, compliant bags of the Retail Establishment operator’s choice, to any customer who participates in or is the beneficiary of any United States government welfare program, or any local or Bergen 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”).

G. TEMPORARY EXEMPT ESTABLISHMENTS

The Mayor and Council, or their designee, may approve a written request for a temporary exemption from the requirements of this Ordinance by any operator of a retail establishment or store, with or without conditions, due to demonstrated hardship in implementing this ordinance in the time set forth.

- (a) Exemption decisions are effective upon Mayor and Council approval and are final, and they are not appealable except as otherwise provided for by law.
- (b) The Borough of Leonia establishes a fee for exemption requests of \$25.00.
- (c) Temporary exemptions may be granted for no more than once per a Retail Establishment and shall be for period lasting no more than of three to six months.

H. ENFORCEMENT

Each Retail Establishment violating any of the provisions of this section shall, upon conviction thereof, be liable for a penalty as provided by law.

- (a) The Property Maintenance Official or his/her designee has the responsibility for enforcement of this chapter and may promulgate reasonable rules and regulations in order to enforce the provisions thereof, including, but not limited to, investigating violations and issuing fines.
- (b) Any retail establishment or store that violates or fails to comply with any of the requirements of this chapter after an initial written warning notice has been issued for that violation shall be liable for an infraction.
- (c) If a Retail Establishment has subsequent violations of this chapter after the issuance of an initial written warning notice of a violation that requires compliance within five (5) days of the written warning notice, the following penalties will be imposed and shall be payable by the operator of the Retail Establishment:
 - (i) A fine not exceeding \$50.00 for the first violation after the written warning notice is given;
 - (ii) A fine not exceeding \$100.00 for the second violation after the written warning notice is given; or
 - (iii) A fine not exceeding \$200.00 for the third and any subsequent violations after the written warning notice is given.

I. 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.

J. REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 2. Severability

If any article, section, sub-section, sentence, clause or phrase of this Ordinance is, for any reason, deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 3. Effect

This Ordinance will take effect on June 1, 2020.

Judah Zeigler, Mayor

ATTEST:

Anne Dodd, RMC
Borough Clerk