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**The New York City Council**

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**Committee Report of the Infrastructure Division**

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**Committee on Sanitation & Solid Waste Management**

Hon. Antonio Reynoso, Chair

#### April 16, 2019

**Preconsidered Int. No. 1527:** By Council Member Lander, Chin, Treyger and Reynoso

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to a paper carryout bag reduction fee, and to repeal chapter 4-F of title 16 of such code, relating to carryout bag reduction

**Administrative Code:** Repeals chapter 4-F of title 16; amends § 16-490, § 16-491, § 16-492

1. **Introduction**

On April 16, 2019, the Committee on Sanitation and Solid Waste Management, chaired by Council Member Antonio Reynoso, will hold a hearing on Preconsidered Int. No. \_\_, sponsored by Council Members Lander, Chin, Treyger, and Reynoso, in relation to a paper carryout bag reduction fee, and to repeal chapter 4-F of title 16 of such code, relating to carryout bag reduction. The Committee expects to hear testimony from representatives from the New York City Department of Sanitation (“DSNY”), environmental advocates, local businesses, and interested members of the public.

1. **Background**

In 2015, the City committed to send Zero Waste to landfill by 2030, as part of the city’s *OneNYC: The Plan for a Strong and Just City*.[[1]](#footnote-1) To measure progress towards the “Zero Waste” goal, the City committed to track waste reduction and waste diversion from landfills, and set a target of reducing the amount of waste disposed by 90% by 2030, from a 2005 baseline.[[2]](#footnote-2) Eight initiatives were developed to reach Zero Waste, including to reduce the use of plastic bags and other non-compostable waste and to give every New Yorker the opportunity to recycle and reduce waste.[[3]](#footnote-3) DSNY estimates around 10 billion single use bags, or some 100,000 tons of paper and plastic bags, are used and discarded in the city per year, costing the City roughly $12 million per year in sanitation costs.[[4]](#footnote-4)

The New York City Council passed Local Law 63 of 2016, which required drug stores, pharmacies, grocery stores, supermarkets, convenience stores, food marts, and green carts to charge a 5-cent fee for each carryout bag provided to a customer.[[5]](#footnote-5) The bill exempted: 1) food service establishments, liquor stores, and emergency food providers; 2) carryout bags used to carry produce, meat, non-prepackaged food items, and prescription drugs; and 3) customers paying with SNAP and WIC.[[6]](#footnote-6) The bill also included other requirements such as an education campaign and reusable bag giveaway by DSNY, an annual plastic bag reduction progress report as part of DSNY’s annual recycling report, and civil penalties for establishments not charging the single use bag fee.[[7]](#footnote-7) However, in February of 2017 the State legislature passed and Governor Andrew M. Cuomo signed a bill that prohibited New York City’s law from being implemented.[[8]](#footnote-8)

Two years later, the state legislature and Governor agreed on statewide legislation in relation to single use bags, as part of the 2019 budget process. On March 31, 2019, the state legislature voted in favor of a bill that bans plastic bags statewide and allows municipalities the option of passing legislation to levy 5-cent fees on paper bags.[[9]](#footnote-9) This paper bag provision was likely based on mounting evidence that legislation that solely bans single use plastic bags lead to significant increases in single use paper bags.[[10]](#footnote-10)

1. **The Impact of Paper Bag Fees**

Several municipalities around the country have passed legislation to decrease single use carryout bag use. These ordinances have varied, and include single use plastic bag bans (bans that only ban plastic bags, sometimes only at a certain thickness), a hybrid model in which there are bans on plastic bags with fees on paper bags, and a charge, fee or tax structure on both paper and plastic single use bags.

Plastic bag bans alone often lead consumers to simply switch to paper bags, thus achieving very little reduction in overall waste while increasing costs for both retailers, as paper bags are more expensive than plastic bags, and for the City, as paper is heavier than plastic bags and would increase costs for recycling facilities or shipments to landfill. New York State’s budget bill allows municipalities the option of a hybrid model, where fees on paper bags can accompany the statewide plastic bag ban.

This option is important in addressing the negative environmental impacts of, paper bags, as well as encouraging overall waste reduction and meeting the City’s zero waste by 2030 goals. For paper bag production, forests must be cut down, reducing trees that absorb greenhouse gases while the manufacturing of paper bags produces greenhouse gases. Producing paper bags also requires a lot of water and fuel.[[11]](#footnote-11) In terms of pollution, the majority of paper bags are made by heating wood chips under pressure at high temperatures in a chemical solution of limestone and acid.[[12]](#footnote-12) The use of these chemicals contributes to both air and water pollution.

According to DSNY, paper bags - including grocery bags, fast food bags, and non-food retail bags - totals nearly 30,000 tons in overall discards.[[13]](#footnote-13) Of these 30,000 tons, only 7,000 tons of discards were recycled, or about 25% of all paper bags. Among different sources of paper bags, grocery bags have the highest capture rate of 45%.[[14]](#footnote-14)

Reducing plastic *and* paper bags from our daily routines will not only reduce waste and pollution in our communities, but also impact our collective efforts to combat climate change. Some 350 cities, counties, or states around the United States have banned or taxed single-use bags as a way to save money, reduce litter in communities, and protect water resources.

Municipalities that have imposed fees have seen significant reductions in overall carryout bag use:

* Washington DC: a 2010 fee on single use plastic and paper bags resulted in a 50% decrease in single use bag usage. The majority of residents reported seeing less plastic bag litter, and 68% of businesses reported less plastic bag litter around their business. Post-fee, businesses report 82% of customers brought their own bags, compared to 42% prior to the fee going into effect.[[15]](#footnote-15)
* Chicago, IL: a fee on single use plastic and paper bags resulted in a 42% decrease in single use bag usage within one month.[[16]](#footnote-16)
* Los Angeles, CA: a 2010 ban on single use plastic bags and fee on recyclable paper bags resulted in a 94% reduction in single use bag usage.[[17]](#footnote-17)
* San Jose, CA:[[18]](#footnote-18) a ban on single use plastic bags and fee on allowable alternatives resulted in an 89% reduction in plastic bags in storm drainage system, a 60% reduction in creeks and rivers, and a 59% reduction of plastic bag litter in neighborhoods.[[19]](#footnote-19)
* Seattle, WA and Portland, OR: a ban on single use plastic bags with a fee on acceptable alternatives also showed reductions in single use bag usage.[[20]](#footnote-20)

In order for single use bag bans or fees to work, reusable bags must be accessible to all municipal residents. In recent years, DSNY has worked to support bag reuse by distributing reusable bags. Since 2016, DSNY has distributed about 475,000 reusable bags.[[21]](#footnote-21) DSNY plans to distribute at least another 500,000 bags over the next several years.[[22]](#footnote-22) DSNY had targeted outreach for reusable bag distribution in the areas highlighted in Local Law of 2016: "residents in households with annual income below two hundred percent of the federal poverty line and covered stores and residents within the police precincts identified in subparagraph b of paragraph four of subdivision b of section 17-307."[[23]](#footnote-23)

1. **Legislation**

Proposed Int. No. \_\_ would require certain covered retail vendors who sell certain products subject to New York State sales tax to charge a fee of 5 cents for each paper bag provided to a customer of such vendor. This bill would have the City opt into the State law provision that permits localities to implement a paper bag fee, which goes into effect on March 1, 2020. It would also exempt residents who use the supplemental nutrition assistance program (SNAP) or the special supplemental nutrition program for women, infants and children (WIC), as either full or partial payment toward the items purchased in a covered store, from paying the bag fee. This local law would take effect on March 1, 2020.

Preconsidered Int. No.

By Council Members Lander, Chin, Treyger and Reynoso

A LOCAL LAW

..Title

To amend the administrative code of the city of New York, in relation to a paper carryout bag reduction fee, and to repeal chapter 4-F of title 16 of such code, relating to carryout bag reduction

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 4-F of title 16 of the administrative code of the city of New York is REPEALED and a new chapter 4-F is added to read as follows:

CHAPTER 4-F: PAPER CARRYOUT BAG REDUCTION FEE

§ 16-490 Definitions

§ 16-491 Paper carryout bag reduction fee

§ 16-492 Exemptions

§ 16-490 Definitions. As used in this chapter:

Exempt bag. The term “exempt bag” means: (i) a bag used solely to contain or wrap uncooked meat, fish or poultry; (ii) a bag used by a customer solely to package bulk items such as fruits, vegetables, grains or candy; (iii) a bag used solely to contain food sliced or prepared to order; (iv) a bag used solely to contain a newspaper for delivery to a subscriber of such newspaper; (v) a bag sold in bulk to a consumer at the point of sale; (vi) a trash bag; (vii) a bag used for food storage; (viii) a garment bag; (ix) a bag prepackaged for sale to a customer; (x) a plastic carryout bag provided by a restaurant, tavern or similar food service establishment, as defined in section 14-1.20 of title 10 of the New York codes, rules and regulations, to carry out or deliver food; or (xi) a bag provided by a pharmacy to carry prescription drugs.

Paper carryout bag. The term “paper carryout bag” means a paper bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under article 28 of the tax law.

Person required to collect tax. The term “person required to collect tax” means any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section 1105 of the tax law.

§ 16-491 Paper carryout bag reduction fee. a. On and after March 1, 2020, there shall be a paper carryout bag reduction fee of five cents imposed on each paper carryout bag provided by any person required to collect tax to a customer.

b. Any sales slip, invoice, receipt or other statement of price furnished by a person required to collect tax to a customer shall separately state and make payable the paper carryout bag reduction fee and shall state the number of paper carryout bags provided to the customer.

c. Pursuant to paragraph (c) of subdivision 1 of section 27-2805 of the environmental conservation law, the transfer of a paper carryout bag to a customer by a person required to collect tax shall not constitute a retail sale and the fee imposed on paper carryout bags pursuant to this section shall not constitute a receipt for the sale of tangible personal property.

d. Pursuant to subdivision 4 of section 27-2805 of the environmental conservation law, the paper carryout bag reduction fee shall be reported and paid by a person required to collect tax to the New York state commissioner of taxation and finance, accompanied by a return in the form and containing the information prescribed by such commissioner, on a quarterly basis on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August and November, respectively.

§ 16-492 Exemptions. a. Pursuant to subdivision 3 of section 27-2805 of the environmental conservation law, the paper carryout bag reduction fee imposed pursuant to section 16-491 shall not apply to any customer using the supplemental nutritional assistance program, special supplemental nutrition program for women, infants and children, or any successor programs used as full or partial payment for the items purchased.

b. Pursuant to subparagraph (1) of paragraph (b) of subdivision 6 of section 27-2805 of the environmental conservation law, the exemptions provided for in section 1116 of the tax law, other than the exemptions in paragraphs (1), (2) and (3) of subdivision (a) of such section, shall not apply to the paper carryout bag reduction fee imposed pursuant to section 16-491.

§ 2. Within five days of the enactment of this local law, the commissioner of sanitation shall mail a certified copy of this local law by registered or certified mail to the New York state commissioner of taxation and finance and file a certified copy of this local law with the New York state tax commission, the city clerk, the secretary of state and the New York state comptroller pursuant to subdivisions (d) and (e) of section 1210 of the tax law.

§ 3. This local law takes effect on March 1, 2020, except that the commissioner of sanitation and the commissioner of finance may take such measures as are necessary for its implementation prior to such effective date.

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1. One New York: The Plan for a Strong and Just City (April 2015) at 176, *available at* http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *Id.* at 176-87 [↑](#footnote-ref-3)
4. New York City Department of Sanitation, "Carryout Bags" <https://www1.nyc.gov/assets/dsny/site/our-work/zero-waste/carryout-bags> (*last accessed on April 15, 2019*) [↑](#footnote-ref-4)
5. *See* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687953&GUID=492A60EA-D352-462A-915A-BB2C34A58D61&Options=Text|&Search=209> [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. Kenneth Lovett, "Gov. Cuomo signs bill that blocks NYC disposable bag fee" New York Daily News (February 14, 2017) <https://www.nydailynews.com/new-york/n-y-lawmakers-urge-cuomo-compromise-disposable-bag-fee-article-1.2972351> [↑](#footnote-ref-8)
9. Bernadette Hogan and Bruce Golding, "Albany legislators approve NY plastic-bag ban, beginning next March" New York Post (March 31, 2019) <https://nypost.com/2019/03/31/albany-legislators-approve-ny-plastic-bag-ban-beginning-next-march/> [↑](#footnote-ref-9)
10. *See* New York State Plastic Bag Task Force, "An Analysis of the Impact of Single-Use Plastic Bags: Options for New York State Plastic Bag Legislation" (December 29, 2017) at 13 and 20, <https://www.dec.ny.gov/chemical/112291.html> [↑](#footnote-ref-10)
11. All About Bags, "Paper Vs. Plastic Bags" <http://www.allaboutbags.ca/papervplastic.html> (*last accessed on April 15, 2019*) [↑](#footnote-ref-11)
12. Collin Dunn, "Paper Bags or Plastic Bags? Everything You Need to Know" Treehugger (July 9, 2008) <https://www.treehugger.com/culture/paper-bags-or-plastic-bags-everything-you-need-to-know.html> [↑](#footnote-ref-12)
13. Information provided to the New York City Council by DSNY, April 2019. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *See* New York State Plastic Bag Task Force, "An Analysis of the Impact of Single-Use Plastic Bags: Options for New York State Plastic Bag Legislation" (December 29, 2017) at 10, <https://www.dec.ny.gov/chemical/112291.html> [↑](#footnote-ref-15)
16. *Id* at 11. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. Both Los Angeles and San Jose hybrid models were implemented prior to California’s statewide hybrid legislation when into effect. [↑](#footnote-ref-18)
19. *Id.*  [↑](#footnote-ref-19)
20. *Id.* at 12. [↑](#footnote-ref-20)
21. Information provided to the New York City Council by DSNY, April 2019. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *See* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1687953&GUID=492A60EA-D352-462A-915A-BB2C34A58D61&Options=Text|&Search=209> [↑](#footnote-ref-23)