

STRICKEN AS OF 11/12/2009

Intro. Res. No. 1418-2009
Introduced by Legislators Vilorio-Fisher

Laid on Table 5/12/2009

**RESOLUTION NO. -2009, ADOPTING LOCAL LAW
NO. -2009, A LOCAL LAW TO REDUCE THE USE OF
DISPOSABLE BAGS BY RETAIL STORES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on May 12, 2009, a proposed local law entitled, "**A LOCAL LAW TO REDUCE THE USE OF DISPOSABLE BAGS BY RETAIL STORES** ;" now, therefore, be it

RESOLVED, that said local law be enacted in form as follows:

**LOCAL LAW NO. -2009, SUFFOLK COUNTY, NEW YORK
A LOCAL LAW TO REDUCE THE USE OF DISPOSABLE
BAGS BY RETAIL STORES**

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that data released by the United States Environmental Protection Agency shows that between 500 billion and 1 trillion plastic bags are consumed worldwide each year.

This Legislature also finds and determines that most plastic bags do not biodegrade; over time, the bags break down into smaller, more toxic petro-polymers which eventually contaminate soils and waterways.

This Legislature further finds and determines that it is estimated that plastic bags account for over 10% of debris that washes up on the United States coastlines.

This Legislature finds that plastic bags can have a devastating effect on wildlife; birds can become entangled in the bags and different species of sea life can die from ingesting plastic bags which they mistake for food.

This Legislature determines that plastic shopping bags are made from polyethylene, a thermoplastic made from oil. Accordingly, reducing the use of plastic bags will decrease our dependence on foreign oil.

This Legislature also finds that less than 1% of plastic bags are recycled, in part, due to the fact that it costs more to recycle a bag than to produce a new one.

This Legislature further finds that it is estimated that Americans consume more than 10 billion paper bags each year. An estimated 14 million trees are cut down annually for paper bag production. The industry appropriately claims that paper bags cost more to ship, stock and store.

Therefore, the purposes of this law are to strengthen current recycling efforts and to reduce the number of disposable carry-out bags provided to customers by retailers through the imposition of a surcharge of five (5) cents per bag at the point of sale, with one (1) cent going to store owners as an incentive.

Section 2. Definitions.

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

“DISPOSABLE BAG” shall mean any carry-out bag, commonly composed of plastic or kraft paper, provided at the point of sale to consumers to carry purchased goods, but excludes bags used to store produce, flowers, baked goods or meat which are provided by a retailer either (1) prior to the point of sale or (2) at a location other than the point of sale, bags used to cover dry cleaned items, paper bags provided by a pharmacy for the storage of purchased pharmaceuticals or plastic bags used to envelop newspapers intended for delivery at a residence.

“OPERATOR” shall mean a person in control of, or having responsibility for, the daily operation of a retail store, which may include, but is not limited to, the owner of the retail store.

“RETAIL STORE” shall mean any outlet, store, shop, mercantile establishment or other place of business engaged in the retail sale of goods or merchandise directly to consumers, but does not include a restaurant.

“RESTAURANT” shall mean any business that has the sole purpose of selling meals for individual consumption.

“CUSTOMER” shall mean any individual who is an actual purchaser of goods used primarily for personal, family or household purposes.

Section 3. Prohibition.

No retail store located and doing business within the County of Suffolk shall sell, give or provide carry-out bags to customers without collecting the surcharge authorized in Section 4 of this law.

Section 4. Surcharge Requirements.

On or after January 1, 2010, any operator of a retail store who provides disposable bags at the point of sale to a customer shall charge such customer a surcharge of five (5) cents for each such bag.

Section 5. Surcharge Distribution.

The \$0.05 surcharge per recyclable paper and plastic carry-out bag shall be distributed as follows:

(A) To the Retail Store:

- (1) From each \$0.05 surcharge collected, \$0.01 will remain with the store; however a store that chooses to offer a carry-out bag credit program to

its customers, as outlined in subsection (2) will retain an additional \$0.01 from each surcharge collected, for a total of \$0.02 per surcharge collected.

- (2) For an establishment to retain an additional \$0.01 from each surcharge collected, its carry-out bag credit program must:
 - (a) Credit the consumer a minimum of \$0.05 for each carry-out bag provided by the consumer for packaging their purchases, regardless of whether the bag is paper, plastic, or reusable;
 - (b) Be prominently advertised at each checkout register; and
 - (c) Reflect the total credit amount on the consumer transaction receipt.

(3) The portion of the surcharge retained is tax exempt.

- (B) The remaining amount from each surcharge collected shall be submitted to the Office of the Suffolk County Treasurer. On or before March 31, 2010, each retailer collecting the surcharge as provided in this section shall submit a return to the Suffolk County Treasurer that is applicable to the quarter commencing January 1, 2010, on a form prescribed by the Treasurer, together with payment of the quarterly proceeds of the surcharge collected in accordance with the provisions of this section. Each retailer shall submit such return and payment to the Treasurer each calendar quarter thereafter, on or before the last day of the month immediately following the end of each such calendar quarter. The Suffolk County Treasurer shall deposit any such payment in a Designated Fund for Storm Water Remediation, as established in Section 6 of this law.

Section 6. Designated Surcharge Account; Use of Monies.

There is hereby established an account to be known as the Designated Fund for Storm Water Remediation which shall be a separate, non-lapsing account within the General Fund. Monies collected by the Suffolk County Treasurer pursuant to this law shall be deposited in this account and shall only be expended for water quality protection programs and land stewardship initiatives as are authorized in Section C12-2(B) of the SUFFOLK COUNTY CHARTER.

Section 7. Enforcement.

Whenever any retail store fails to collect and pay over the proceeds of the surcharge and/or pay any penalties or interest imposed by this law as provided herein, the Suffolk County Treasurer shall have the authority to request that the County Attorney bring an action to enforce the payment of the same on behalf of the County of Suffolk and to seek the civil penalties authorized by this law.

Section 8. Rules and Regulations.

The Suffolk County Treasurer is hereby authorized and empowered to promulgate rules and regulations necessary to enforce this law.

Section 9. Penalties.

- (A) Whenever the proceeds of such surcharge is not paid to the County when due, a penalty of ten percent (10%) of the amount due or fifty dollars (\$50.00), whichever is greater, shall be added to the amount due and such penalty shall immediately accrue, and thereafter such proceeds shall bear interest at the rate of one and one-half percent (1.5%) per month until the same is paid.
- (B) The Suffolk County Treasurer shall cause copies of a form prescribed for submitting returns as required under Section 5 of this Local Law to be distributed throughout the County. Failure to receive such forms shall not be construed to relieve anyone subject to the provisions of this Local Law from the obligations of submitting a return, together with payment of such proceeds within the time required.
- (C) Any violation of this law shall be punishable by a civil fine of five hundred dollars (\$500.00) for each violation.

Section 10. Reverse Preemption

This law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Suffolk. The County Legislature may determine via mere resolution whether or not identical or substantially similar Statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 11. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 12. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 13. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK

ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 14. Effective Date.

This law shall take effect one hundred eighty (180) days after its filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language
___ Underlining denotes addition of new language

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: