

Yarmouth Proposed Bag Bylaw

Town Meeting Article 31

May 6, 2017

ARTICLE 31: To see if the Town will vote to add the following provisions to the Town Bylaws, as follows, or take any other action relative thereto:

Chapter 160: Plastic Bag Reduction

§ 106-1 Authority

This bylaw is made by the authority of a vote of the inhabitants of the Town of Yarmouth while acting on Article 36 of the Warrant for Town Meeting held on May 6, 2017, and shall continue in force until altered, amended, rescinded or repealed by Town Meeting.

§ 160-2 Purpose

The production and use of disposable plastic bags has 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 bylaw is to eliminate the use of disposable plastic checkout bags by all establishments as defined herein in the Town of Yarmouth.

§160-3 Definitions

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

BIOPLASTIC MATERIALS - Substances made from renewable, organic, biomass sources -- living organisms and their residues---such as agricultural byproducts, vegetable fats and oils, cornstarch, or microbiota, rather than fossil fuels. For purposes of this bylaw, bags made of Bioplastic Materials must be Compostable.

CHECKOUT 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 this bylaw.

COMPOSTABLE - Conforming to the most current ASTM D6400 standard for compostability.

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

DISPOSABLE PLASTIC BAG means a plastic checkout bag with a thickness less than 4.0 mils.

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.

RAW FOOD AND BULK ITEM BAGS - Bags used by customers to package bulk items, such as fruit, vegetables, nuts, grains, candy, hardware, pharmacy, or other items; contain or wrap fresh or frozen foods, including meat or fish, whether pre-packaged or not; or contain or wrap flowers, potted plants, or other items where dampness may be a problem.

RECYCLABLE PAPER BAGS - Paper bags with or without handles 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, etc. and that (1) are one hundred percent (100%) recyclable, and (2) contain a minimum of forty percent (40%) postconsumer recycled paper content, and (3) have all the following information printed in a visible manner on the outside of the bag: the word "recyclable," the name and country of the manufacturer, and the percentage of postconsumer recycled paper content.

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

§160-4 Disposable Plastic Checkout Bags Prohibited

Disposable plastic checkout 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 Yarmouth.

§160-5 Raw Food and Bulk Item Bags

Any Raw Food and Bulk Item Bags made available by Establishments must be made of Bioplastic Materials; 100 percent (100%) recyclable paper made with at least forty percent (40%) postconsumer recycled material; FDA-approved Compostable cellophane or other cellulosic material; or Compostable unbleached wax paper made with non-petroleum-based wax.

§160-6 Exemptions and Alternatives

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

- (1) Thin plastic bags used to protect newspapers upon delivery.
- (2) Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used 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.

§160-7 Deferments

- A. Upon written request to the Board of Health or its designee and demonstration of how this bylaw would cause undue hardship to the Establishment, such Establishment may

receive temporary, one time deferment of this bylaw to their operation for up to three (3) months.

- B. All applications for deferment must include all information necessary for the Board of Health or its designee to make its decision, including but not limited to documentation showing factual support of undue hardship for the claimed deferment. Undue hardship is defined as a situation unique to the Establishment in which there are no reasonable alternatives to the use of Disposable Plastic Checkout Bags or to comply with the requirement that Raw Food and Bulk Item Bags be made of Bioplastic Materials, and compliance with this bylaw would create significant economic hardship for the Establishment.
- C. The Board of Health or its designee shall issue a decision, with or without conditions, on an application for a deferment within 60 days of receipt of the application.

§160-8 Inspection and Enforcement

- A. The Board of Health, the Director of Public Health and persons designated by the Director of Public Health shall have the authority to administer and enforce this bylaw.
- B. 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.

§160-9 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.

The Yarmouth Board of Health, after a Public Hearing, may suspend, revoke, or deny any license or permit issued by the Board of Health for violations of this bylaw.

Non-payment of fines may result in the suspension, revocation, or denial of other Town-issued license(s) or permit(s) in accordance with G.L. c. 40, §57.

§160-10 Severability and Effective Date

A. If any provision of this bylaw 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 bylaw, which shall remain in full force and effect.

B. This bylaw shall take effect twelve (12) months following the effective date of the bylaw to allow time for Establishments to use their existing inventory of disposable plastic checkout bags and to convert to alternative packaging materials.

Selectmen Recommend (3-2)

Finance Committee Recommends (6-0)

(Petitioner)