

3 June 2019

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL ____

Introduced by: Councilmember Henry

A BILL ENTITLED

AN ORDINANCE concerning

Comprehensive Bag Reduction

FOR the purpose of repealing the Plastic Bag Reduction Program; prohibiting certain dealers from supplying customers with plastic bags for use as checkout bags; authorizing certain exemptions; defining certain terms; imposing certain civil and criminal penalties; imposing a surcharge on checkout bags supplied by dealers to certain customers; and providing for special effective dates.

BY repealing

Article 15. Licensing and Regulation
Subtitle 16. Plastic Bag Reduction
Baltimore City Code
(Edition 2000)

BY adding

Article 7. Natural Resources
Section(s) 62-1 to 62-11, to be under the new subtitle,
“Subtitle 62. Plastic Bag Reduction”
Baltimore City Code
(Edition 2000)

BY repealing and reordaining, with amendments

Article 1. Mayor, City Council, and Municipal Agencies
Section 40-14(e)(.5a)
Baltimore City Code
(Edition 2000)

Explanation: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THIS BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

BY repealing

Article 1. Mayor, City Council, and Municipal Agencies
Section 40-14(e)(2) (“Subtitle 16. Plastic Bag Reduction”)
Baltimore City Code
(Edition 2000)

BY adding

Article 28. Taxes
Section(s) 31-1 to 31-11, to be under the new subtitle,
“Subtitle 31. Checkout Bag Surcharge”
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That City Code Article 15, Subtitle 16, is repealed, in its entirety.

SECTION 2. AND BE IT FURTHER ORDAINED, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 7. Natural Resources

Subtitle 62. PLASTIC BAG REDUCTION

§ 62-1. Definitions.

(A) *IN GENERAL.*

IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) *CHECKOUT BAG.*

- (1) “CHECKOUT BAG” MEANS A PLASTIC BAG PROVIDED BY A DEALER AT NO ADDITIONAL COST TO A CUSTOMER AT THE POINT OF SALE, PICKUP, OR DELIVERY TO CARRY PURCHASED ITEMS.
- (2) “CHECKOUT BAG” DOES NOT INCLUDE A COMPOSTABLE PLASTIC BAG THAT:
 - (i) IS CERTIFIED AND LABELED AS MEETING THE ASTM D6400 STANDARD SPECIFICATION BY A RECOGNIZED VERIFICATION ENTITY; AND
 - (ii) IS CAPABLE OF UNDERGOING BIOLOGICAL DECOMPOSITION IN A COMPOST SITE SUCH THAT THE MATERIAL BREAKS DOWN INTO CARBON DIOXIDE, WATER, INORGANIC COMPOUNDS, AND BIOMASS AT A RATE CONSISTENT WITH KNOWN COMPOSTABLE MATERIALS.

(C) *COMMISSIONER*.

“COMMISSIONER” MEANS THE COMMISSIONER OF HEALTH OR THE COMMISSIONER’S DESIGNEE.

(D) *DEPARTMENT*.

“DEPARTMENT” MEANS THE BALTIMORE CITY DEPARTMENT OF HEALTH.

(E) *DEALER*.

(1) “*PERSON*” DEFINED.

IN THIS SUBSECTION, “PERSON” MEANS:

- (I) AN INDIVIDUAL;
- (II) A PARTNERSHIP, FIRM, ASSOCIATION, LIMITED LIABILITY COMPANY, CORPORATION, OR OTHER ENTITY OF ANY KIND;
- (III) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND; OR
- (IV) A GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR UNIT OF A GOVERNMENTAL ENTITY.

(2) “DEALER” MEANS ANY PERSON ENGAGED IN THE RETAIL SALE OF GOODS.

(3) “DEALER” INCLUDES ANY:

- (I) SUPERMARKET;
- (II) CONVENIENCE STORE;
- (III) RESTAURANT;
- (IV) SHOP;
- (V) SERVICE STATION; OR
- (VI) OTHER SALES OUTLET.

§ 62-2. {RESERVED}

§ 62-3. PROHIBITED CONDUCT.

EXCEPT AS PROVIDED IN § 62-4 {“EXEMPTION: BAGS FOR CERTAIN PRODUCTS”} AND § 62-5 {“EXEMPTION: VOUCHER OR ELECTRONIC BENEFITS TRANSFER PURCHASES”} OF THIS SUBTITLE, NO DEALER MAY SUPPLY CUSTOMERS WITH CHECKOUT BAGS.

§ 62-4. EXEMPTION: BAGS FOR CERTAIN PRODUCTS.

THIS SUBTITLE DOES NOT APPLY TO A CHECKOUT BAG SOLELY USED TO CONTAIN:

- (1) FRESH FISH AND FRESH FISH PRODUCTS;
- (2) FRESH MEAT AND FRESH MEAT PRODUCTS;
- (3) FRESH POULTRY AND FRESH POULTRY PRODUCTS;
- (4) OTHERWISE UNPACKAGED FRUITS, NUTS, OR VEGETABLES;
- (5) OTHERWISE UNPACKAGED CONFECTIONERY;
- (6) OTHERWISE UNPACKAGED FRESH CHEESE;
- (7) OTHERWISE UNPACKED BAKED GOODS;
- (8) ICE;
- (9) FOOD AND GOODS OBTAINED AT A FARMERS' MARKET;
- (10) PRESCRIPTION DRUGS OBTAINED FROM A PHARMACY;
- (11) NEWSPAPERS; OR
- (12) DRY-CLEANED GOODS.

§ 62-5. EXEMPTION: VOUCHER OR ELECTRONIC BENEFITS TRANSFER PURCHASES.

THIS SUBTITLE DOES NOT APPLY TO A PURCHASE MADE BY A CUSTOMER USING A VOUCHER OR ELECTRONIC BENEFITS TRANSFER CARD ISSUED UNDER THE FOOD SUPPLEMENT PROGRAM (FSP), WOMEN, INFANTS, AND CHILDREN PROGRAM (WIC), OR THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP).

§ 62-6. {RESERVED}

§ 62-7. RULES AND REGULATIONS.

(A) *IN GENERAL.*

THE COMMISSIONER MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) *FILING WITH LEGISLATIVE REFERENCE.*

A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

§ 62-8. ANNUAL REPORT.

(A) *IN GENERAL.*

ON OR BEFORE JUNE 30 OF EACH YEAR, THE COMMISSIONER MUST PREPARE AND SUBMIT TO THE MAYOR AND THE CITY COUNCIL AN ANNUAL REPORT DETAILING COMPLIANCE WITH THIS SUBTITLE.

(B) *CONTENTS.*

THE REPORT SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE PREVIOUS CALENDAR YEAR:

(1) THE NUMBER OF INSPECTIONS CONDUCTED OF BUSINESSES REGULATED UNDER THIS SUBTITLE; AND

(2) THE NUMBER OF CITATIONS ISSUED PURSUANT TO THIS SUBTITLE.

§ 62-9. {RESERVED}

§ 62-10. ENFORCEMENT BY CITATION.

(A) *IN GENERAL.*

IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE, THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF AN ENVIRONMENTAL CITATION AS AUTHORIZED BY CITY CODE ARTICLE 1, SUBTITLE 40 {"ENVIRONMENTAL CONTROL BOARD"}.

(B) *PROCESS NOT EXCLUSIVE.*

THE ISSUANCE OF AN ENVIRONMENTAL CITATION DOES NOT PRECLUDE PURSUING ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW.

§ 62-11. CRIMINAL PENALTIES.

(A) *IN GENERAL.*

ANY DEALER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 FOR EACH OFFENSE.

(B) *EACH DAY A SEPARATE OFFENSE.*

EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 40. Environmental Control Board

§ 40-14. Violations to which subtitle applies.

(e) *Provisions and penalties enumerated.*

(.5a) Article 7. Natural Resources

Division I. Floodplain Management \$500

DIVISION VI. MISCELLANEOUS

SUBTITLE 62. PLASTIC BAG REDUCTION

1ST OFFENSE \$250

2ND OFFENSE IN SAME 6-MONTH PERIOD \$500

3RD OR SUBSEQUENT OFFENSE IN SAME 6-MONTH PERIOD \$1,000

(2) Article 15. Licensing and Regulation

[Subtitle 16. Plastic Bag Reduction

1st offense \$250

2nd offense in same 6-month period \$500

3rd or subsequent offense in same 6-month period \$1,000]

Article 28. Taxes

Subtitle 31. CHECKOUT BAG SURCHARGE

§ 31-1. DEFINITIONS.

(A) *IN GENERAL.*

IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(B) *DEALER.*

“DEALER” HAS THE MEANING STATED IN CITY CODE ARTICLE 7, § 62-1(E) {“DEFINITIONS: DEALER”}.

(C) *DIRECTOR.*

“DIRECTOR” MEANS THE DIRECTOR OF THE DEPARTMENT OF FINANCE OR THE DIRECTOR’S DESIGNEE.

(D) *CHECKOUT BAG.*

(1) *IN GENERAL.*

“CHECKOUT BAG” MEANS ANY PAPER OR PLASTIC PROVIDED BY A DEALER TO A

CUSTOMER AT THE POINT OF SALE, PICKUP, OR DELIVERY TO CARRY PURCHASED ITEMS.

(2) *INCLUSIONS.*

“CHECKOUT BAG” INCLUDES A COMPOSTABLE PLASTIC BAG THAT:

- (I) IS CERTIFIED AND LABELED AS MEETING THE ASTM D6400 STANDARD SPECIFICATION BY A RECOGNIZED VERIFICATION ENTITY; AND
- (II) IS CAPABLE OF UNDERGOING BIOLOGICAL DECOMPOSITION IN A COMPOST SITE SUCH THAT THE MATERIAL BREAKS DOWN INTO CARBON DIOXIDE, WATER, INORGANIC COMPOUNDS, AND BIOMASS AT A RATE CONSISTENT WITH KNOWN COMPOSTABLE MATERIALS.

(3) *EXCLUSIONS.*

“CHECKOUT BAG” DOES NOT INCLUDE A BAG SOLELY USED TO CONTAIN:

- (I) FRESH FISH AND FRESH FISH PRODUCTS;
- (II) FRESH MEAT AND FRESH MEAT PRODUCTS;
- (III) FRESH POULTRY AND FRESH POULTRY PRODUCTS;
- (IV) OTHERWISE UNPACKAGED FRUITS, NUTS, OR VEGETABLES;
- (V) OTHERWISE UNPACKAGED CONFECTIONERY;
- (VI) OTHERWISE UNPACKAGED FRESH CHEESE;
- (VII) ICE;
- (VIII) FOOD AND GOODS OBTAINED AT A FARMERS’ MARKET;
- (IX) PRESCRIPTION DRUGS OBTAINED FROM A PHARMACY;
- (X) NEWSPAPERS; OR
- (XI) DRY-CLEANED GOODS.

(E) *PERSON.*

“PERSON” MEANS:

- (1) AN INDIVIDUAL;
- (2) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY KIND;
OR

- (3) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND.

§ 31-2. {RESERVED}

§ 31-3. SURCHARGE IMPOSED.

(A) *IN GENERAL.*

A SURCHARGE IS IMPOSED ON EVERY CHECKOUT BAG SUPPLIED BY A DEALER TO A CUSTOMER.

(B) *AMOUNT OF SURCHARGE.*

THE AMOUNT OF THE SURCHARGE IS 5 CENTS FOR EACH BAG.

(C) *NO EFFECT ON DEALER'S OWN IMPOSITION.*

NOTHING IN THIS SECTION LIMITS THE ABILITY OF A DEALER TO IMPOSE A SEPARATE PURCHASE OR SERVICE FEE FOR A CHECKOUT BAG PROVIDED TO A CUSTOMER.

§ 31-4. COLLECTION AND REMITTANCE.

(A) *DEALER TO COLLECT.*

- (1) THE DEALER MUST COLLECT THE SURCHARGE IMPOSED BY THIS SUBTITLE FROM THE CUSTOMER TO WHOM THE CHECKOUT BAG IS SUPPLIED.
- (2) THE AMOUNT OF THE SURCHARGE MUST BE ITEMIZED ON ANY RECEIPT, INVOICE, OR LIKE DOCUMENT ISSUED TO THE CUSTOMER.

(B) *REMITTANCE TO DIRECTOR.*

- (1) EXCEPT AS SPECIFICALLY AUTHORIZED IN PARAGRAPH (2) OF THIS SUBSECTION, THE SURCHARGE IMPOSED BY THIS SUBTITLE MUST BE REMITTED TO THE DIRECTOR ON OR BEFORE THE 25TH DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH THE TRANSACTION OCCURRED.
- (2) TO COVER THE ADMINISTRATIVE EXPENSE OF COLLECTING AND REMITTING THE SURCHARGE TO THE DIRECTOR, THE DEALER MAY RETAIN 1 CENT FROM EACH 5 CENT SURCHARGE COLLECTED UNDER THIS SUBTITLE.

(C) *REMITTANCE REPORTS.*

- (1) EACH REMITTANCE MUST BE ACCOMPANIED BY A REPORT FOR THE MONTH OF ALL TRANSACTIONS THAT INVOLVED CHECKOUT BAGS SUBJECT TO THE SURCHARGE.
- (2) THE REPORT MUST:

- (I) BE IN THE FORM AND CONTAIN THE INFORMATION THAT THE DIRECTOR REQUIRES; AND
- (II) INCLUDE:
 - (A) THE NUMBER OF CHECKOUT BAGS SUPPLIED OR PROVIDED TO CUSTOMERS;
 - (B) THE AGGREGATE AMOUNT OF THE SURCHARGE REQUIRED BY THIS SUBTITLE TO BE COLLECTED; AND
 - (C) ANY OTHER INFORMATION THAT THE DIRECTOR REQUIRES TO ASSURE THAT THE PROPER SURCHARGE HAS BEEN REMITTED.

§ 31-5. SURCHARGE DETERMINATION BY THE DIRECTOR.

(A) *DIRECTOR TO OBTAIN INFORMATION.*

IF ANY PERSON FAILS TO REMIT THE SURCHARGE AND MAKE THE REPORTS WHEN DUE OR FAILS TO KEEP SUITABLE RECORDS AS REQUIRED UNDER THIS SUBTITLE, THE DIRECTOR MAY ATTEMPT TO OBTAIN OTHER AVAILABLE INFORMATION ON WHICH TO BASE AN ESTIMATE OF THE SURCHARGE DUE.

(B) *DIRECTOR TO ESTIMATE SURCHARGE.*

AS SOON AS THE DIRECTOR OBTAINS THIS INFORMATION, THE DIRECTOR MAY PROCEED TO DETERMINE THE SURCHARGE DUE AND ASSESS THAT SURCHARGE, PLUS INTEREST AND PENALTIES, AGAINST THE PERSON LIABLE FOR THE SURCHARGE.

(C) *NOTICE AND PAYMENT.*

(1) THE DIRECTOR MAY THEN NOTIFY THE PERSON BY MAIL, SENT TO THAT PERSON'S LAST KNOWN ADDRESS, OF THE TOTAL AMOUNT OF THE SURCHARGE, INTEREST, AND PENALTIES.

(2) THE TOTAL AMOUNT IS PAYABLE WITHIN 10 DAYS FROM THE DATE OF THIS NOTICE.

§ 31-6. INTEREST AND CIVIL PENALTIES.

IF A DEALER FAILS TO REMIT THE SURCHARGE IMPOSED BY THIS SUBTITLE WHEN DUE, THE DEALER MUST PAY THE DIRECTOR, IN ADDITION TO THE SURCHARGE DUE:

(1) INTEREST AT THE RATE OF 1% FOR EACH MONTH OR FRACTION OF A MONTH THAT THE SURCHARGE IS OVERDUE; AND

(2) A PENALTY OF 10% OF THE AMOUNT OF THE SURCHARGE DUE.

§ 31-7. {RESERVED}

§ 31-8. RULES AND REGULATIONS.

(A) *IN GENERAL.*

THE DIRECTOR MUST ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) *FILING WITH LEGISLATIVE REFERENCE.*

A COPY OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.

§ 31-9. {RESERVED}

§ 31-10. PROHIBITED CONDUCT.

A DEALER MAY NOT:

- (1) FAIL, NEGLECT, OR REFUSE TO COLLECT OR REMIT THE SURCHARGE IMPOSED BY THIS SUBTITLE;
- (2) MAKE ANY INCOMPLETE, FALSE, OR FRAUDULENT RETURN;
- (3) FAIL TO KEEP COMPLETE AND ACCURATE RECORDS;
- (4) REFUSE TO PERMIT THE FINANCE DIRECTOR OR THE DIRECTOR'S AUTHORIZED AGENT, EMPLOYEE, OR REPRESENTATIVE TO INSPECT AND AUDIT THE OPERATOR'S RECORDS; OR
- (5) FAIL TO FULLY COMPLY WITH ANY PROVISION OF THIS SUBTITLE OR OF ANY RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE.

§ 31-11. CRIMINAL PENALTIES.

ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR OF A RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR TO IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR TO BOTH FINE AND IMPRISONMENT FOR EACH OFFENSE.

SECTION 3. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 4. AND BE IT FURTHER ORDAINED, That the Baltimore City Department of Health in conjunction with the Baltimore City Office of Sustainability shall engage in an outreach and education campaign to all affected dealers and their customers informing them of the prohibitions, exemptions, and penalties set forth in section 2 of this ordinance. This campaign may include providing signs for point of sale stations and storefronts, media buys and placements, and public service announcements.

SECTION 5. AND BE IT FURTHER ORDAINED, That section 4 of this Ordinance takes effect on the date of this Ordinance's enactment.

SECTION 6. AND BE IT FURTHER ORDAINED, That, except as provided in section 5 of this ordinance, this Ordinance takes effect 1 year after the date it is enacted.