

## Local Law No. - 2019

This local law shall be known as the "Mamaroneck Bag Waste Reduction" law.

BE IT ENACTED by the Town Board of the Town of Mamaroneck

### Section 1 – Purpose:

The State of New York amended article 27 of the Environmental Conservation Law by adding a new Title 28 (Bag Waste Reduction) which will become effective on March 1, 2020. The purpose of this local law is to incorporate the new state law into the laws of the Town of Mamaroneck.

The Town Board determines that a shift to reusable bags in most retail transactions will benefit the overall health, safety and welfare of the Town and the environment. The Town Board also finds that a fee for using non-reusable bags is essential if there is to be a transition to reusable bags because such a fee will encourage consumers to use reusable bags rather than bags for which a fee is charged. Furthermore, the Town Board agrees with the Supreme Court of the State of Colorado which in *Colo. Union of Taxpayers Found. v City of Aspen*, 418 P.3d 506 (Colo. 2018) held that the imposition of a fee for using single-use bags is not a tax; but a fee designed to promote health, safety and welfare.

### Section 2 – Addition of a new chapter to the Mamaroneck Code:

The Code of the Town of Mamaroneck hereby is amended by adding the following new chapter thereto:

## **Chapter 170**

### **Bag Waste Reduction**

#### **§170-1. Title.**

This chapter shall be known as the "Bag Waste Reduction Law of the Town of Mamaroneck."

#### **§170-2. Purpose.**

The State of New York amended article 27 of the Environmental Conservation Law by adding a new Title 28 (Bag Waste Reduction) which will become effective on March 1, 2020. The purpose of this local law is to incorporate the new state law into the laws of the Town of Mamaroneck.

The Town Board determines that a shift to reusable bags in most retail transactions will benefit the overall health, safety and welfare of the Town and the environment. The Town Board also finds that a fee for using non-reusable bags is essential if there is to be a transition to reusable bags because such a fee will encourage consumers to use reusable bags rather than bags for which a fee is charged. Furthermore, the Town Board agrees with the Supreme Court of the State of Colorado

which in *Colo. Union of Taxpayers Found. v City of Aspen*, 418 P.3d 506 (Colo. 2018) held that the imposition of a fee for using single-use bags is not a tax; but a fee designed to promote health, safety and welfare.

### **§170-3. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

“Exempt bag” means (a) a bag used solely to contain or wrap uncooked meat, fish or poultry, (b) a bag used by a customer solely to package bulk items such as fruits, vegetables, grains or candy, (c) a bag used solely to contain food sliced or prepared to order, (d) a bag used solely to contain a newspaper for delivery to a subscriber, (e) bags sold in bulk to a consumer at the point of sale, (f) trash bags, (g) food storage bags, (h) garment bags, (i) bags prepackaged for sale to a customer, (j) plastic carryout bags provided by a restaurant, tavern or similar food service establishment, as defined in the state sanitary code, to carry out or deliver food, or (k) bags provided by a pharmacy to carry prescription drugs.

“Plastic carryout bag” means any plastic 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 twenty-eight of the tax law.

“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 twenty-eight of the tax law.

“Reusable bag” means (a) a bag made of cloth or other machine washable fabric that has handles, or (b) a durable bag with handles that is specifically designed and manufactured for multiple reuse.

“Person required to collect tax” means any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section eleven hundred five of the tax law.

### **§170-4. Plastic carryout bag ban.**

A. Commencing on December 1, 2019, no person required to collect tax shall distribute any plastic carryout bags to its customers unless such bags are exempt bags as defined in section 170-3 of the Mamaroneck Town Code.

B. Commencing on December 1, 2019, no person required to collect tax shall prevent any person from using a bag of any kind that they have brought for purposes of carrying goods.

**§170-5. Paper carryout bag reduction fee.**

A. Commencing on December 1, 2019, a person required to collect tax may provide a customer with a paper carryout bag only if it collects from the customer a paper carryout bag reduction fee of \$0.05 for each paper carryout bag it provides to the customer. The paper carryout reduction fee and the number of paper carryout bags provided must be separately stated on the sales slip, invoice, receipt, or other statement of the price rendered to the customer. The persons collecting paper carryout bag reduction fees shall be allowed to retain the sums collected.

B. The paper carryout bag reduction fee shall not be collected from 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.

**§170-6. Westchester County paper carryout bag reduction fee.**

If the County of Westchester imposes a paper carryout bag reduction fee through the adoption of a local law, ordinance or resolution, the paper carryout reduction fee imposed by this local law shall remain in full force and effect until the day before the first anniversary of the effective date of County of Westchester’s local law, ordinance or resolution imposing a paper carryout bag reduction fee.

**§ 170-7. Penalties for offenses; continuing violations.**

A person required to collect tax who violates any provision of this chapter shall receive a warning notice for the first such violation but shall be liable to the Town of Mamaroneck for a civil penalty of two hundred fifty dollars for the first violation after receiving a warning and a civil penalty of five hundred dollars for any subsequent violation. A person required to collect tax may request a hearing before the Town Board to contest the imposition of a civil penalty pursuant to section 170-7 of the Mamaroneck Town Code.

Section 3 – Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law, which may be implemented without the invalid or unconstitutional provisions.

Section 4 – Effective Date:

This Local Law shall become effective upon its filing with the Secretary of State.

August 23, 2019