

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2017-0006

Sponsored by: <b>Councilmembers Simon and Miller</b>	<b>An Ordinance</b> enacting Chapter 721 of the Cuyahoga County Code to authorize a Carryout Bag Fee for Environmental Remediation.
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WHEREAS, the precipitous increase in plastic production and plastic consumption over the past seventy years has resulted in approximately 269,000 tons of globally distributed plastic waste pollution, particularly in oceans, lakes, and other marine waterways; and,

WHEREAS, plastic waste is not bio-degradable and recycled plastic suffers from polymer degradation, limiting its useful life as a recyclable material, inevitably resulting in non-biodegradable microplastic particle pollution; and,

WHEREAS, discarded disposable bags are a major source of litter, pollute our open spaces, harm and kill wildlife, clog storm drains resulting in localized flooding, end up as debris in our neighborhoods and waterways, and contributes to blight; and,

WHEREAS, the pollution from disposable bags imposes external cleanup, removal and processing costs on our communities; and,

WHEREAS, Cuyahoga County Council has a compelling public interest in discouraging the wasteful use of disposable bags, mitigating the negative impact disposable bags have on our environment, and in defraying the costs of preventing and remediating environmental hazards; and,

WHEREAS, Cuyahoga County Council desires to combat the polluting effects of and accompanying blight caused by disposable bags on the environment of Cuyahoga County as well as to promote sustainability in northeast Ohio by providing for a fund, specifically named the Environmental Remediation Fund, the purpose for which is to provide for critical pollution prevention, remediation, and sustainability services as set forth in this Ordinance.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Chapter 721 of the Cuyahoga County Code is hereby enacted to read as follows:

**CHAPTER 721: Carryout Bag Fee for Environmental Remediation**

**Section 721.01: Definitions:** The following definitions shall apply for purposes of Chapter 721 of the County Code only:

- (A) **“Carryout Bag”** means a paper or plastic bag provided by a Retail Establishment to a customer at point of sale to carry purchased items. Carryout Bag does not include:
1. a bag the customer brought with them to the Retail Establishment,
  2. a newspaper bag,
  3. a bag provided by a pharmacist that contains a prescription drug,
  4. a bag used to package a bulk item or to contain or wrap a perishable item,
  5. a bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant,
  6. a bag intended for use as a dry cleaning, garbage, pet waste, or yard waste bag, or
  7. a bag provided at curbside pickup or point of delivery.
- (B) **“Environmental Remediation Fund”** means such fund that shall be established by Cuyahoga County (“County”) to collect and expend the fees as defined and outlined under the Chapter.
- (C) **“Occasional Retailer”** means a retail establishment that engages in the retail sale of goods and/or food no more than 20 days in any given year.
- (D) **“Retail Establishment”** means any supermarket, convenience store, department store, store, shop, service station, or restaurant and any other sales outlets where the vendor maintains an indoor footprint of 7,000 square feet or greater where a customer can buy goods and/or food that is not an Occasional Retailer as defined herein.

**Section 721.02: Carryout Bag Fee Imposed**

- (A) Commencing on July 1, 2018, a fee in the amount of ten cents shall be charged by the Retail Establishment to each customer for each Carryout Bag that a Retail Establishment provides to the customer.
- (B) Each Retail Establishment that provides a Carryout Bag to a customer must collect the fee referenced herein when the customer makes any payment for goods and/or food in person, through the Internet, by telephone, by wire, by facsimile, email or by any other means.
- (C) Each Retail Establishment shall encourage customers to bring their own reusable bags and customers who bring their own reusable bags to the Retail Establishment will not be required to use the Retail Establishment’s Carryout Bags nor will they be charged a fee for the use of reusable bags.

- (D) Each Retail Establishment may retain up to four cents from each ten cent fee that the Retail Establishment collects to cover the administrative expense of collecting and remitting the fee to the County.
- (E) A Retail Establishment must indicate on each customer's transaction receipt the number of Carryout Bags that the Retail Establishment provided to the customer and the total amount of fee charged; provided, however that a Retail Establishment may, with prior approval of the Fiscal Officer, use an alternative methodology to estimate the total number of bags provided to each customer in lieu of recording each individual bag.

### **Section 721.03: Remittance of the Carryout Bag Fee**

- (A) On or before the 20<sup>th</sup> day of each month, each Retail Establishment must remit to the Cuyahoga County Fiscal Officer the amount of fees collected for all Carryout Bags provided to a customer during the previous month, less the amount retained for administrative expenses under Section 721.02.
- (B) Each remittance must be accompanied by a report of all transactions and exemptions that involve Carryout Bags. The report must be on a form supplied by the County and must contain the number of Carryout Bags supplied or provided to customers, the amount of total fees required by this Chapter to be collected and any other information that the Fiscal Officer requires to assure the proper fees have been remitted to the County.
- (C) If the Retail Establishment does not file a required report by the deadline established herein, the County may estimate the amount of fees due. The County may base the estimate of a reasonable projection of Carryout Bags supplied or provided and may consider fees reported by other Retail Establishments.
- (D) The County may send a notice of estimated fees due including interest and penalty, to the Retail Establishment's last known address. The Retail Establishment must pay the estimated fees, including any interest and penalty assessed by the County within 10 days after the notice is sent.
- (E) Each Retail Establishment must preserve for 3 years all records necessary to determine the amount of the fees due or any exemptions claimed under this Chapter.
- (F) The County may inspect and/or audit any records required to be kept under this Chapter.
- (G) The County shall deposit all fees under this Chapter into the Environmental Remediation Fund, less any necessary and reasonable expenses required for collection and enforcement of this Chapter. The Environment Remediation Fund may be used to pay costs of, or reimbursement for, eligible environmental remediation expenses, including the purchase or reimbursement of reusable and/or environmentally sustainable bags, recycling, clean-up of lakes, rivers, and waterways, pollution prevention or remediation, litter removal, environmental

education and awareness, other environmental remediation activities or programs intended to combat the polluting effects of and accompanying blight caused by Carryout Bags on the environment in Cuyahoga County, and any administrative and oversight costs incurred by the County for any of the activities described herein.

#### **Section 721.04: Interest and Penalties**

- (A) If a Retail Establishment does not remit to the Fiscal Officer any fees owed under this Chapter when due, the Retail Establishment is liable for interest on collections at the rate of one percent per month for each month or part of a month after the remittance is due and a penalty of 5 percent of the amount of collections per month or part of a month after the remittance is due up to 25 percent of the fees collected.
- (B) The Retail Establishment must pay any interest and penalty as part of the remittance due under this Chapter.

#### **Section 721.05: Prohibited Conduct**

A Retail Establishment shall not:

1. Refuse to allow customers to bring with them and to use their own reusable bags;
2. Neglect or refuse to collect or remit the fee required under this Chapter;
3. File an incomplete, false, or fraudulent report to the Fiscal Officer;
4. Neglect or refuse to keep complete and accurate records; or
5. Refuse to allow the County to inspect and audit the Retail Establishment's records.

#### **Section 721.06: Enforcement**

The County may fine a Retail Establishment \$500 per violation in addition to the fees, penalties and interest described in the Chapter. Any violation may be appealed by the Retail Establishment to The Cuyahoga County Debarment Review Board established under Section 205.06 of the Cuyahoga County Code. The Cuyahoga County Debarment Review Board may establish administrative rules and/or procedures to adjudicate any appeals described herein. A determination by the Debarment Review Board may be appealed to the Cuyahoga County Common Pleas Court pursuant to Section 2506 of the Ohio Revised Code.

#### **Section 721.07: Exemptions**

If, at the point of sale, a customer presents a valid Ohio Electronic Benefit Transfer (EBT) card in the customer's name indicating that the customer is enrolled in the

federal Supplemental Nutrition Assistance Program, then the customer shall not be subject to the Carryout Bag Fee for the transaction, regardless of whether the customer uses their EBT card to purchase goods at the point of sale. The Retail Establishment shall document any such exemptions in a manner acceptable to the County. This Chapter remains subject to Article I, Section 1.02 of the Cuyahoga County Charter.

**Section 721.08: Implementation of the Carryout Bag Fee for Environmental Remediation**

The County Executive or designee may adopt, amend, and enforce regulations and/or administrative rules for the purpose of carrying out the functions, powers, and duties vested in and imposed upon county directors or agencies by this Chapter. The Director of Sustainability shall be responsible for the administration of the Environmental Remediation Fund in accordance with the Contracting and Purchasing Procedures as codified in Chapter 501 of this Code.

**SECTION 2.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

\_\_\_\_\_  
County Council President                      Date

\_\_\_\_\_  
County Executive                                      Date

\_\_\_\_\_  
Clerk of Council                                      Date

First Reading/Referred to Committee: October 10, 2017  
Committee(s) Assigned: Education, Environment & Sustainability

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\_\_\_\_\_, 2017