

RESOLUTION NO. 1236-2019, ADOPTING LOCAL LAW NO. 9 -2020, A LOCAL LAW TO REPLACE THE CURRENT CHAPTER 704, ARTICLE XI, OF THE SUFFOLK COUNTY CODE TO COMPLY WITH NEW YORK STATE LAW

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on November 6, 2019, a proposed local law entitled, "**A LOCAL LAW TO REPLACE THE CURRENT CHAPTER 704, ARTICLE XI, OF THE SUFFOLK COUNTY CODE TO COMPLY WITH NEW YORK STATE LAW**"; now, therefore be it

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

LOCAL LAW NO. 9 -2020, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO REPLACE THE CURRENT CHAPTER 704, ARTICLE XI, OF THE SUFFOLK COUNTY CODE TO COMPLY WITH NEW YORK STATE LAW

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 in 2016 this Legislature adopted Local Law No. 27-2016 which instituted a five-cent carryout bag fee on all plastic and paper bags provided by retailers.

This Legislature also finds and determines that New York State recently passed legislation that eliminates plastic bags and authorizes municipalities to opt into a set paper bag fee which funds distribution of reusable bags to low income residents and contributes to the New York State Environmental Protection Fund.

This Legislature further finds and determines that in order to fully comply with the recently adopted New York State law, it should repeal the current section of the SUFFOLK COUNTY CODE and replace it with the State's version of the law.

Therefore, the purpose of this law is to completely repeal Article XI of Chapter 704 of the SUFFOLK COUNTY CODE and replace it with a new Article XI.

Section 2. Repeal.

Article XI of Chapter 704 of the SUFFOLK COUNTY CODE is hereby repealed in its entirety.

Section 3. Amendments.

A new Article XI of Chapter 704 of the SUFFOLK COUNTY CODE is hereby adopted as follows:

CHAPTER 704. RETAIL SALES.

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Article XI. Use of Carryout Bags.

§ 704-81. Definitions.

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

EXEMPT BAG - a bag: (a) used solely to contain or wrap uncooked meat, fish, or poultry; (b) bags used by a customer solely to package bulk items such as fruits, vegetables, grains, or candy; (c) bags used solely to contain food sliced or prepared to order; (d) bags 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.

PAPER CARRYOUT BAG - 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 New York State tax law.

PERSON REQUIRED TO COLLECT TAX - any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section eleven hundred five of the New York State tax law.

§ 704-82. Paper carryout bag reduction fee

1. A paper carryout bag reduction fee, regardless of whether any tangible personal property is sold, shall be imposed at a rate of five cents on each paper carryout bag provided by a person required to collect tax to a customer in Suffolk County. The paper carryout bag reduction fee must be reflected and made payable on the sales slip, invoice, receipt, or other statement of the price rendered to the customer.

2. Pursuant to section 27-2805 of the New York Environmental Conservation Law, such paper carryout bag reduction fee shall not constitute a receipt for the sale of tangible personal property subject to tax pursuant to New York State tax law, and transfer of a bag to a customer by a person required to collect tax shall not constitute a retail sale.

3. The paper carryout bag reduction fee imposed by this section shall not apply to 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 any items purchased.

4. Any sales slip, invoice, receipt, or other statement of price furnished by a person required to collect tax to a customer shall separately state the paper carryout bag reduction fee and the number of bags provided to the customer.

5. The paper carryout bag reduction fee received in accordance with this law shall be remitted to the New York State Commissioner of Taxation and Finance and distributed in accordance with the provisions of New York Environmental Conservation Law § 27-2805.

§ 704-83. Violations.

All violations of this article shall be addressed by New York State in accordance with New York Environmental Conservation Law § 27-2807.

Section 4. Filing with the New York State Commissioner of Taxation and Finance.

Within fifteen (15) days of the approval of this local law by the County Executive, the Clerk of the County Legislature shall mail a certified copy of this local law by registered or certified mail to the New York State Commissioner of Taxation and Finance pursuant to subdivisions (d) and (e) of section 1210 of the New York State Tax Law.

Section 5. Applicability.

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

Section 6. 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 7. 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)(26) 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 routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. 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 8. Effective Date.

This law shall take effect on March 1, 2020.

DATED: December 17, 2019

APPROVED BY:

/s/ Dennis M. Cohen
Chief Deputy County Executive of Suffolk County

Date: January 2, 2020

After a public hearing duly held on January 2, 2020
Filed with the Secretary of State on January 14, 2020