

**ORDINANCE #2018-22C**

**AN ORDINANCE CREATING NEW CHAPTER 213 ENTITLED “REGULATING  
AND LIMITING THE USE OF PLASTIC BAGS BY BUSINESSES IN THE  
BOROUGH”**

**STATEMENT OF PURPOSE**

The purpose of this Ordinance is to create Chapter 213, which adopts regulations relating to and limiting the use of plastic bags by businesses in the Borough. The regulations are intended as necessary and proper steps by the Borough to address a significant global problem relating to the sale and use of plastic bags, to further incentivize the use of reusable bags at businesses, and, ultimately, to protect the environment, wildlife, and the public health, welfare, and safety.

**LEGISLATIVE FINDINGS**

**WHEREAS**, the governing body of the Borough of Beach Haven (“Borough”) believes it has a duty to investigate and implement any and all necessary and proper steps the Borough can take to protect the environment and the public health, welfare, and safety; and

**WHEREAS**, according to the United States Environmental Protection Agency (“EPA”) in 2016, as many as one trillion plastic bags are used worldwide each year and an estimated less than 5% of that plastic is recycled; and

**WHEREAS**, in the United States alone, according to the EPA, over 380 billion plastic bags and wraps are used each year, approximately 40% of the bags used are single-use plastic bags, and the 380 billion plastic bags require an estimated 12 million barrels of oil to create; and

**WHEREAS**, according to National Geographic, across the globe, people throw away roughly four million tons of trash *every day*, enough to fill 350,000 garbage trucks or 10 Empire State Buildings and approximately 12.8% of that waste is plastic; and

**WHEREAS**, it has been reported that approximately 19 billion pounds of plastic garbage end up in the Earth’s oceans each year, which is approximately an area 34 times the size of Manhattan covered in ankle-deep plastic waste; and

**WHEREAS**, no body of water, waterway, beach, or shoreline is unaffected by this pollution, as ocean currents and waterways that flow into the oceans can transport plastic waste tossed into the water from the Borough’s shoreline to Australia and vice versa; and

**WHEREAS**, according to National Geographic, seabirds, fish, and other marine and land-based animals mistake plastic for food, while others can become entangled in the trash, leading to exhaustion, starvation, and eventual death; and

**WHEREAS**, studies have demonstrated that turtles often mistake plastic bags for jellyfish, eat them, and those bags do not pass through their digestive systems, which results in their intestines being blocked and the turtles die of starvation (studies on dead turtles have found that more than 50% of them have plastic in their stomachs); and

**WHEREAS**, studies have demonstrated that over decades of sunlight and pounding waves, plastic breaks down into microplastics that measure 5 millimeters or less, which are ingested by shrimp, plankton, fish, birds, turtles, and other sea animals, the effects of which to the ecosystem and food chain are not yet clear; and

**WHEREAS**, it is beyond dispute that the use of single-use, plastic carryout bags has a severe and negative environmental impact on the local and global environment as a result of the greenhouse gas emissions emitted to produce such bags, the land-based and ocean-based pollution created, the hazards posed to wildlife, the blocking of storm drains by plastic, the hazards posed to sources of water for humans, and the negative impact on the ecosystem and food chain as a whole; and

**WHEREAS**, despite recycling requirements, growing public awareness, the work of non-profits, and voluntary attempts to control pollution from the single-use, plastic carryout bags, very few single-use carryout bags are actually recycled (as noted, it is estimated that less than 5% of all plastic bags are actually recycled and some estimates are as low as 1%); and

**WHEREAS**, at present, there is no widespread acceptance or use of biodegradable and environmentally safe plastic bags in the marketplace and it is unclear that such bags would prevent all of the negative impacts documented herein; and

**WHEREAS**, from an environmental, economic, public health, welfare, and safety, as well as survival perspective, the best available alternatives to plastic, single-use carryout bags are to shift to reusable bags for shopping and/or the use of recycled paper bags for shopping; and

**WHEREAS**, the Municipal Council seeks, to the fullest extent of its jurisdiction and authority, to conserve resources, reduce greenhouse gas emissions, reduce waste and litter, and to protect the public health, welfare, and safety, which includes the protection of the environment, waterways, and wildlife, in order to attempt to protect and increase the quality of life for the Borough's residents and visitors; and

**WHEREAS**, the Borough's taxpayers currently bear the costs associated with the negative effects of plastic, single-use carryout bags on the solid waste stream, drainage, litter, and the negative consequences of the foregoing environmental impacts; and

**WHEREAS**, the evidence supports the conclusion that the vast majority of single-use, plastic carryout bags are used for the bagging and carryout of products purchased from businesses, as such businesses are defined in this ordinance; and

**WHEREAS**, studies document and participating municipalities report that prohibiting the free distribution of single-use, plastic carryout bags at businesses will dramatically reduce the use of those type of bags; and

**WHEREAS**, over 150 states, municipalities, and counties in the United States presently either ban or require fees for the sale and use of plastic bags, including, but not limited to California (2014), Seattle (2012), Austin (2013), Los Angeles (2014), Dallas (2015), Chicago (2015), Borough of Longport, New Jersey (2015), and Brunswick, Maine (2017); and

**WHEREAS**, based upon the foregoing, the governing body has concluded that residents and visitors should use reusable bags and that a prohibition on the distribution of single-use, plastic carryout bags by businesses is appropriate and will incentivize the use of reusable and recycled bags at businesses; and

**WHEREAS**, based upon the foregoing, the governing body has further concluded that it is unquestionably in the best interests of the health, safety, and welfare of the residents and visitors of the Borough to reduce the cost of waste disposal and to protect the environment, wildlife, and natural resources by reducing the distribution of single-use, plastic carryout bags and incentivizing the use of reusable bags at business.

**NOW THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Beach Haven, Ocean County, State of New Jersey, in accordance with the aforesaid Recitals, which are incorporated herein by reference, that:

## SECTION I

There is hereby established the following new Chapter within the Code of the Borough of Beach Haven:

### **Chapter 213. SINGLE-USE, PLASTIC CARRYOUT BAGS**

#### **§213-1. Definitions.**

The following words, phrases and terms as used in this chapter are hereby defined for the purpose thereof as follows.

#### **BAIT**

Any live or previously live and now frozen substance used to attract and catch fish or crabs on the end of a fishing hook or inside or bait trap.

#### **BUSINESS OR STORE**

For the purposes of this Chapter, any retail establishment that engages in the retail sale of goods and products. The definition includes, but is not limited to, pharmacies, supermarkets, grocery stores, convenience stores, clothing stores, surf shops, food marts, and food service establishments.

#### **FOOD SERVICE ESTABLISHMENT**

Any establishment which serves made-to-order food for dine-in, takeout, or delivery.

#### **GARMENT BAG**

A large, zippered bag incorporating a hanger on which garments may be hung to prevent wrinkling during travel or storage and used to protect and transport clothing or other textiles.

#### **GOODS AND PRODUCTS**

Things and items that are prepared and made to be sold, including, but not limited to, clothing, groceries, prepared food, foodstuffs, meat, dairy, merchandise, books, jewelry, alcohol, tobacco products, toys, and any and all other things and items sold at retail by businesses and stores.

#### **PRODUCE BAG OR PRODUCT BAG**

Any bag without handles that is used exclusively to segregate produce, meats, other food items, and merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items, where such contact could damage or contaminate other food or merchandise when placed together in a reusable or recycled bag.

#### **RETAIL**

The sale of goods and products for use and/or consumption.

#### **REUSABLE BAG**

A bag that is designed and manufactured to withstand repeated uses over a period of time, is machine washable or made from a material that can be cleaned and disinfected regularly.

#### **SINGLE-USE, PLASTIC CARRYOUT BAG**

A bag, sheet, or receptacle produced or manufactured from material commonly known as "plastic" or "polyethylene" provided at the check-out stand, cash register, point of sale, or other point of departure for the purpose of transporting goods or products out of the establishment. The term single-use, plastic carryout bag does not include reusable bags, produce bags, product bags, or garment bags.

**§213-2. Regulation of Single-Use, Plastic Carryout Bags.**

No business or store shall provide any single-use, plastic carryout bags to a customer at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting products or goods out of the business or store, except as otherwise provided in this Chapter.

**§213-3. Exception.**

Single-use, plastic carryout bags may be used by businesses or stores to sell bait.

**§213-4. Enforcement**

- A. Any notice of violation issued pursuant to this chapter shall be by the Municipal Court of the Borough of Beach Haven, which shall have the power to impose penalties as provided herein.
- B. The Code Enforcement Officer or Borough Police Department shall have the authority to enforce the provisions of this chapter.
- C. Any business or store that violates this chapter or any rules promulgated pursuant thereto shall receive a warning notice for the first violation.
- D. Any business or store that violates this chapter or any rules promulgated pursuant thereto subsequent to receiving a warning notice for a first violation pursuant to Subsection C of this section shall be liable for a civil penalty of \$250 for the first violation after receiving a warning and \$500 for any subsequent violation of the same section or subsection of this chapter or rule promulgated pursuant thereto. For purposes of this chapter, each commercial transaction shall constitute no more than one (1) violation.

**SECTION II**

All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**SECTION III**

If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

**SECTION IV**

This ordinance shall take effect nine (9) months after final adoption and publication as required by law.

**CERTIFICATION**

I, Sherry Mason, RMC, Municipal Clerk of the Borough of Beach Haven, do hereby certify that the foregoing Ordinance was duly adopted on first reading by the Municipal Council of the Borough of Beach Haven at a regular meeting held on the 9<sup>th</sup> day of July, 2018, a quorum being present and voting in the majority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 9<sup>th</sup> day of July, 2018.

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Sherry Mason, RMC, CMR, CMC  
Municipal Clerk

<i>First Reading:</i>	<i>July 9, 2018</i>
<i>Publication:</i>	<i>July 19, 2018</i>
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