

## ORDINANCE

### **AN ORDINANCE AMENDING CHAPTER 20 ("PUBLIC HEALTH"), NEW ARTICLE 14 ("RETAIL SINGLE-USE BAG PILOT PROGRAM") OF THE OAK PARK VILLAGE CODE TO MAKE THE VILLAGE'S RETAIL SINGLE-USE BAG PROGRAM MANDATORY**

**WHEREAS**, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, the Village Board has determined that the production, use, and disposal of disposable plastic shopping bags have significant adverse impacts on the environment; and

**WHEREAS**, the Village has determined that to discourage and decrease the use of disposable plastic shopping bags within the Village, it is necessary to regulate such use; and

**WHEREAS**, the Village has determined that it is not desirable to replace the use of disposable plastic shopping bags with paper bags; and

**WHEREAS**, as a home rule unit, the Village of Oak Park's powers shall be construed liberally as held by the Illinois Supreme Court in the case of *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

**WHEREAS**, this Ordinance is presumed constitutional and the burden of rebutting that strong presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation as held by the Illinois Supreme Court in the case of *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008); and

**WHEREAS**, it is well-settled law in Illinois that the legislative judgment of the Village Board must be considered presumptively valid, and a court has a duty to uphold the constitutionality of an ordinance when reasonably possible, *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747 (2<sup>nd</sup> Dist. 1992); and

**WHEREAS**, the Village Board finds that there is a compelling governmental interest in implementing reasonable regulations on the use of disposable shopping bags within the Village and that such regulations are essential to discourage and decrease the use of disposable plastic shopping bags within the Village; and

**WHEREAS**, said regulations are in the best interest of the health, safety, and welfare of Village residents and these regulations reduce the adverse impacts of disposable shopping bags on the environment and the Village; and

**WHEREAS**, on July 7, 2015, the Village’s Environment and Energy Commission EEC voted to recommend that the Oak Park Village Board consider a single-use bag fee equally applicable to paper and plastic bags pursuant to a vote of seven (7) in favor and one (1) against; and

**WHEREAS**, at the Village Board study session on March 14, 2016, staff was directed to propose an ordinance to store owners and/or managers of establishments that generate a large number of carryout single-use bags; and

**WHEREAS**, on April 17, 2017, the Village Board adopted Ordinance Number 17-203 to provide for a retail single-use bag pilot program (“Program”); and

**WHEREAS**, the Village Board has determined to make the Program mandatory for the retail establishments set forth herein; and

**WHEREAS**, other retail establishments not subject to this Ordinance that provide carry-out bags as defined in this Ordinance that wish to voluntarily meet the requirements of this Ordinance shall be eligible for marketing grants from the Village from the amounts remitted to the Village for waste stream diversion and litter reduction activities.

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Recitals Incorporated.** The above recitals are incorporated herein as though fully set forth.

**Section 2. Village Code Amended.** Chapter 20 (“Public Health”), Article 14 (“Retail Plastic Bag Use”) of the Oak Park Village Code is amended to delete the overstricken language and add the underlined language as follows:

**Article 14**  
**RETAIL SINGLE-USE BAG ~~PILOT PROGRAM~~**

**20-14-1: DEFINITIONS:**

**20-14-2: CARRYOUT SINGLE-USE BAG FEE:**

**20-14-3: REMITTANCE:**

**20-14-4: FAILURE TO PAY FEE:**

**20-14-5: REUSABLE BAGS**

**20-14-6: PERMITTED BAGS**

**20-14-7: PROHIBITED CONDUCT:**

**20-14-8: BOOKS AND RECORDS**

**20-14-9: PENALTIES:**

**~~20-14-10: EFFECT AND REPEAL:~~**

The words and phrases set forth below are hereby defined as follows for purposes of this article:

**CARRYOUT SINGLE-USE BAG:** Any paper or plastic bag provided by a retail establishment to a customer at the point of sale, pickup, or delivery to carry purchased items. A carryout single-use bag does not include:

1. A bag provided by a pharmacist that contains a prescription drug;
2. Any newspaper bag or bag intended for initial use as a dry cleaning, garbage, pet waste, or yard waste bag;
3. A bag provided at the point of sale at a seasonal event, such as a farmers market, street fair, or yard sale, or by an occasional retailer;
4. A paper or plastic bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant; or
5. A bag used to package a bulk item or to contain or wrap a perishable item.

**CUSTOMER(S):** Any person purchasing goods from a store.

**DIRECTOR:** Director means the Village's Chief Financial Officer.

~~**PARTICIPATING STORE:** A retail establishment that participates in the program.~~

~~**PROGRAM:** The Village Manager or the Village Manager's designee shall establish a registration process for a retail establishment that wishes to voluntarily comply with this article. Such establishment shall be "green partner certified" or other similar designation by the Village and shall eligible for marketing grants or other approved Village incentives from the amounts remitted to the Village for waste stream diversion and litter reduction activities.~~

**RESTAURANT:** Any lunchroom, café, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with a public dining area. A restaurant does not include any area of a supermarket, department store, or other retail establishment beyond the kitchen and public dining area.

**RETAIL ESTABLISHMENT:** Any person engaged in the retail sale of goods with a floor area whose square footage is 5,000 feet or greater which sells perishable or non-perishable goods, including, but not limited to, clothing, food and personal items, directly to customers. Retail establishment includes any supermarket, convenience store, shop, or service station.

**REUSABLE BAG:** A bag with handles that is specifically designed and manufactured for multiple re-use and is made of cloth, fiber, or other machine washable fabric.

**20-14-2: CARRYOUT SINGLE-USE BAG FEE:**

- A. A fee in the amount of ten cents (10¢) is levied and imposed on each customer for each carryout single-use bag that a ~~participating store~~ retail establishment provides to a customer.
- B. Each ~~participating store~~ retail establishment must collect the amount of the fee imposed pursuant to this section when the customer makes any payment for goods in person, through the Internet, by telephone, by facsimile, or by any other means. The ~~participating store~~ retail establishment must hold the fees required to be collected under this Section in trust for the Village until remitted as required by this article.
- C. Each ~~participating store~~ retail establishment may retain five (5) cents from each ten (10) cent fee that the store collects to cover the administrative expense of collecting and remitting the fee to the Village.
- D. A ~~participating store~~ retail establishment must indicate on the customer's transaction receipt the number of carryout bags that the store provided to the customer and the total amount of fee levied under this section.

**20-14-3: REMITTANCE:**

- A. On or before the 25<sup>th</sup> of each month, each ~~participating store~~ retail establishment must remit the full amount of the fee collected for all carryout bags provided to a customer during the previous month to the Village, less the amount retained under Section 20-14-3.
- B. Each remittance must be accompanied by a report of all transactions subject to the fee. The report must be on a form supplied by the Director and must contain the number of bags supplied or provided to customers, the amount of fee required by this Section to be collected and any other information the Director requires to assure that the required fee has been remitted to the Village.
- D. If the ~~participating store~~ retail establishment does not file a required report within the time required by this section, the Director may estimate the amount of fee due. The Director may base the estimate on a reasonable projection of bags supplied or provided and may consider fees reported by other stores.
- E. The Director may send a notice of the estimated fee due, including penalties pursuant to Section 20-14-4 below, to the ~~participating store's~~ retail establishment's last known address. The ~~participating store~~ retail establishment must pay the estimated fee, including any interest and penalty assessed by the Director, within ten (10) days after the notice is sent.

F. Funds received by the Village pursuant to this article shall be deposited into the Village's Sustainability Fund.

**20-14-4: FAILURE TO PAY FEE:**

If for any reason any fee is not paid when due by a ~~participating store~~ retail establishment, a penalty at the rate of two percent (2%) per month on the amount of tax which remains unpaid shall be due and owing in addition to other penalties authorized by this article.

**20-14-5: REUSABLE BAGS:**

A ~~participating store~~ retail establishment may provide reusable bags to its customers for the purpose of enabling the customer to carry away goods from the point of sale. The fee imposed pursuant to Section 20-14-2 above shall not apply to reusable bags.

**20-14-6: PERMITTED BAGS:**

Nothing in this article shall be construed to prohibit a customer from using bags of any type that the customer brings to the store for the customer's own use or from carrying away goods from the store that are not placed in a bag provided by the store.

**20-14-7: PROHIBITED CONDUCT:**

A ~~participating store~~ retail establishment shall not:

- A. Neglect or refuse to collect or remit the fee levied under this article;
- B. File an incomplete, false, or fraudulent report to the Director;
- C. Neglect or refuse to keep complete and accurate records; or
- D. Refuse to allow the Director to inspect and audit the ~~participating store's~~ retail establishment's records.

**20-14-8: BOOKS AND RECORDS:**

Every retail establishment ~~that participates in the program shall~~ required to collect the fee imposed pursuant to this article shall keep accurate books and records of its business, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the fee being imposed. Each ~~participating store~~ retail establishment must preserve for three (3) years all records necessary to determine the amount of the fee due under this section. All such books and records shall be subject to and available for inspection by the Director during regular business hours.

#### **20-14-9: PENALTIES:**

Any person or retail establishment that ~~participates in the program~~ that violates any provision of this article shall be subject to a fine of not less than \$150.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense. In addition, the Village Manager may revoke or suspend a retail establishment's ~~program participation~~ business license if the Village Manager determines the ~~participating store~~ retail establishment has failed to comply with the duties imposed under this article after notice and hearing. The suspension or revocation of ~~program participation~~ a license shall not release or discharge the ~~participating store~~ retail establishment from its liability to pay the fee or from any other penalties authorized by this article.

#### **~~20-14-10: EFFECT AND REPEAL:~~**

~~This article shall be in effect on July 1, 2017 and shall be repealed on June 30, 2019. Following the first twelve (12) months this article is in effect, the Village's Environment and Energy Commission shall review the program and shall provide a report to the Village Board no later than December 31, 2018 to allow the Village Board to determine whether to renew, alter or replace the program.~~

**Section 3. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law on January 1, 2018.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

**ADOPTED** this 7<sup>th</sup> day of August, 2017, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Andrews				
Trustee Boutet				
Trustee Button				
Trustee Moroney				
Trustee Taglia				
Trustee Tucker				

**APPROVED** this 7<sup>th</sup> day of August, 2017.

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Anan Abu-Taleb, Village President

**ATTEST**

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Vicki Scaman, Village Clerk

Published in pamphlet form this 7<sup>th</sup> day of August, 2017.

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Vicki Scaman, Village Clerk