

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 8-11, Taxation – Excise Tax – Disposable Carryout Bags

Bill 8-11, Taxation – Excise Tax – Disposable Carryout Bags, sponsored by the Council President at the request of the County Executive, was introduced on March 15, 2011. At introduction, Councilmembers Rice and Elrich asked to be listed as co-sponsors. A public hearing was held on March 31. See selected testimony, ©22-25, 28-48.

Bill 8-11 would impose an excise tax on certain carryout bags provided to customers at certain retail establishments, and require certain retail establishments to collect the carryout bag tax and remit the tax to the County. The consumer would pay the tax to the retailer, who would remit it periodically to the County Finance Department. As introduced, the tax would take effect on January 1, 2012. This Bill is based on part of a similar District of Columbia law (see ©13-20) which was enacted in 2009.

Legal authority Under state law codified as County Code §52-17, the County has broad excise taxing authority as long as the proposed tax is not a sales or property tax – i.e., if the tax is not based on the amount of the transaction or the value of the item. As a flat tax on the provision of each bag irrespective of its cost or value, this tax qualifies as an excise tax.

Issues

1) Should the County tax carryout bags? Would an alternative approach achieve the same environmental goals?

The Executive proposed this tax to achieve 2 different but related goals: raise some revenue, and create an incentive for consumers and retailers to use fewer disposable bags. The latter goal would be a step toward the larger goal of improving and cleaning up the natural environment.

If the County's legislative goal is to reduce the use of disposable bags, or some subset of them, by some means beyond public education or persuasion, 3 options have been suggested;

- prohibit their sale or use;

- require retailers to collect and refund a deposit on each bag, as is done in some jurisdictions for certain bottles and cans; or
- tax them, as this Bill proposes.

When asked why the Executive did not propose to prohibit use of these bags, Department of Environmental Protection (DEP) staff replied:

In the process of developing this legislation we consulted extensively with jurisdictions around the country on various options available to reduce litter from carryout bags, including the option of a ban. A ban takes the choice of using plastic bags away from consumers. Taking away consumer choice was not an option that was acceptable to us.

We would rather, that people who choose to litter with a plastic bag defray some of the cost of cleaning up litter, which currently all tax payers bear.

Part of the DC law (see ©14) prohibits the sale or distribution of “disposable carryout bags made of plastic that cannot be recycled”. The DC law also sets standards for reusable and disposable paper and plastic bags. The Executive’s proposed Bill has no similar provision.

A deposit system has the added benefit of creating a further incentive for people beyond either the retailer or ultimate consumer to clean up the environment by collecting and returning covered bags to collect the deposit. However, as the experience with cans and bottles has shown, it involves more administrative details and costs than does a tax.

Opponents, including Councilmember Floreen (see her op-ed on ©27; also see Kominers testimony on ©46-48 and American Chemistry Council testimony on ©44-45) argue that a tax of this type may result in unintended negative consequences.¹ These include contamination of reusable bags, increased costs to consumers (particularly low-income and elderly), and discouragement of plastic bag recycling. However, one study on cross-contamination of reusable bags, circulated by opponents of this tax (and funded by the American Chemistry Council, the only organization to testify against the tax at the public hearing), concluded that: “Hand or machine washing reduced the numbers of bacteria in reusable bags by >99.9%.”

DC Councilmember Wells, testifying at the hearing, observed that “Consumers have adapted to the change in DC quickly and with relatively few complaints.” He added that senior and low-income consumers welcomed the free reusable bags distributed by local retailers such as CVS. In the Executive’s testimony (see ©28) the County committed to providing free bags to low-income and senior residents.

2) Should the tax apply to both plastic and paper bags?

As proposed, this tax applies to any carryout bag (defined on ©2, lines 6-8), whether it is made of paper or plastic. Rather than define what kind of bag is “reusable” or “disposable”, as the DC law does, this Bill would not tax a carryout bag made of any other substance.

¹Opponents of this tax submitted 2 published studies to Council staff, one on economic impact of the DC law and the other on cross-contamination of reusable bags, which are available in our files. One was funded by the American Chemistry Council, which represents makers of plastic bags, and the other by an anti-tax organization, Americans for Tax Reform; neither was peer reviewed, and both were unconvincing.

Asked this question, DEP staff replied:

Both paper and plastic bags consume enormous amounts of natural resources and cause significant pollution, so we would advocate neither type of bag (rather reusable bags) if our aim was to minimize life-cycle environmental costs. In Montgomery County, exempting paper bags from this bill would significantly reduce retailers' profits because of the higher cost of stocking and supplying paper bags to customers. This was not an acceptable option for us.

3) If a tax is levied, what rate is appropriate?

This Bill would set the tax rate at 5¢ per bag, the same as the District of Columbia. Setting any tax rate involves a balance between achieving revenue raising goals and public acceptance of the rate level as reasonable. Seattle WA voters recently rejected a 20¢ per bag fee (see ©26). The 5¢ rate seems to have met wide public acceptance in DC. Since the amount of revenue to be raised over time is not critical to the Executive's proposal (see fiscal impact statement on ©9-12), the 5¢ rate seems to be a reasonable starting point.

4) Should the County allow retailers to retain part of the tax? If so, how much?

The DC law allows retailers to retain 1¢ of each 5¢ tax to cover their administrative expenses. It also allows them to retain an additional 1¢ if the retailer credits customers at least 5¢ for each carryout bag the customer brings to carry their purchases (see ©15). This Bill does not include a similar provision.

No representative of a major retailer or local Chamber of Commerce appeared at the public hearing. Various speakers at the hearing noted that retailers save significant amounts of money by not having to buy nearly as many carryout bags when a similar tax is in effect. They estimated the cost of each plastic carryout bag at 3¢ and each paper carryout bag at 5-8¢. (Council staff did not confirm those estimates.) One could infer that, even without the 1¢ set-aside, retailers would at least not lose money if this kind of tax is imposed; some observers have called the 1¢ set-aside a "subsidy" to retailers and especially grocery stores. Council staff concludes that the set-aside may be necessary to achieve retailer concurrence in collecting and administering this tax, as has apparently been the case in DC.

5) Is the January 1, 2012, effective date reasonable? How does the Executive branch plan to prepare for implementation of this tax?

If this Bill is enacted by July 1, the Executive branch will have about the same amount of time that the DC government had to prepare for its implementation. We expect DC government staff to attend this worksession. Among other details, Committee members could ask them to explain what steps they took before their tax took effect.

In particular, Committee members may want to discuss with DEP and other Executive staff:

- how they plan to educate retailers and the public about this tax, if enacted;

- how they plan to distribute free reusable bags to affected consumers; and
- what if any partnerships with retailers and other private organizations they expect to be involved in.

6) Are the exclusions in the Bill appropriate? Are any clarifying amendments needed?

As introduced, Bill 8-11 would not apply the tax to certain types of carryout bags; see the list on ©2, lines 8-15. Attorney Bill Kominers raised questions (see testimony, ©46-48) about the interpretation of some exclusions and whether others may be needed. Specifically:

- Should the Bill expressly exclude bags used to package bulk items or contain or wrap raw or frozen foods, as the DC law does? It's not clear that the general language on ©2, lines 6-8, would exclude them, although we believe Executive staff intended to.
- Should plastic bags used by dry cleaners to hold clean clothes be expressly exempt, as in the DC law?
- Does the exemption for a paper bag that a restaurant puts prepared food in apply to "doggy bags" for unfinished food as well as untouched takeout food? More generally, why should these bags be exempt when grocery bags that hold food are not?
- Should the "seasonal event" exemption also expressly mention street festivals and yard sales? Should this exemption also apply to "occasional retailers", such as residents who hold in-home houseware, fashion, or jewelry sales?
- Should bags needed to hold oversized items, such as the large pillow that Mr. Kominers had at the hearing, be exempt? Such large bags are unlikely to become litter, in our view.

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Bill No. 8-11
Concerning: Taxation – Excise Tax –
Disposable Carryout Bags
Revised: 3-10-11 Draft No. 1
Introduced: March 15, 2011
Expires: September 15, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) impose an excise tax on certain carryout bags provided to customers at certain retail establishments;
- (2) require certain retail establishments to collect the carryout bag tax and remit the tax to the County;
- (3) authorize payment of a fee to compensate certain retail establishments for collecting the carryout bag tax;
- (4) allow certain exemptions from the carryout bag tax;
- (5) authorize imposition of an estimated carryout bag tax under certain circumstances;
- (6) authorize the imposition of interest and penalties for failure to collect and remit the carryout bag tax; and
- (7) generally amend County law to provide for an excise tax on certain bags.

By adding

Montgomery County Code
Chapter 52, Taxation
Article XIV, Carryout Bag Tax
Sections 52-101, 52-102, 52-103, 52-104, 52-105, 52-106, and 52-107

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Article XIV is added to Chapter 52 as follows:

Article XIV. Carryout Bag Tax.

52-101. Definitions.

In this Article, the following terms have the following meanings:

Director means the **Director** of the Department of Finance.

Carryout bag means a paper or plastic bag provided by a **retail establishment** to a customer at the point of sale, pickup, or delivery to carry purchased items. **Carryout 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 garbage, pet waste, or yard waste bag;
- (3) a bag provided at the point of sale at a stand at a seasonal event, such as a farmers market; or
- (4) a paper bag that a **restaurant** gives a customer to take prepared food or drink from the **restaurant**.

Restaurant means any lunchroom, cafe, 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 means any person engaged in the retail sale of goods.

Retail establishment includes any supermarket, convenience store, shop, service station, or restaurant, and any other sales outlet where a customer can buy goods.

52-102. Tax imposed.

- (a) A tax in the amount of 5 cents is levied and imposed on 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 amount of the tax imposed under subsection (a) when the customer makes any payment for goods in person, through the Internet, by telephone, by facsimile, or by any other means. The **retail establishment** must hold the taxes required to be collected under this Section in trust for the County until remitted as required under Section 52-103.

(c) Each **retail establishment** may retain 1 cent from each 5-cent tax that the **retail establishment** collects to cover the administrative expense of collecting and remitting the tax to the County.

(d) A **retail establishment** must indicate on the customer's transaction receipt the number of **carryout bags** that the **retail establishment** provided to the customer and the total amount of tax levied under this Section.

52-103. Remittance.

(a) Except as provided in subsection (b), on or before the 25th day of each month, each **retail establishment** must remit the full amount of the tax collected for all **carryout bags** provided to a customer during the previous month, less the amount retained under Section 52-102 (c).

(b) A **retail establishment** is only required to remit the taxes to the **Director** when the cumulative taxes collected under Section 52-102(a) since the previous remittance, if any, exceed \$100.

(c) Each remittance must be accompanied by a report of all transactions that involve bags subject to the tax. 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 tax required by this Section to be collected and any other information the **Director** requires to assure that the proper tax has been remitted to the County.

(d) (1) If the **retail establishment** does not file a required report by the deadline established under subsection (a), the **Director** may estimate the amount of tax due. The **Director** may base the estimate on a reasonable projection of bags supplied or provided and may consider taxes reported by other **retail establishments**.

(2) The **Director** may send a notice of the estimated tax due, including interest and penalty, to the **retail establishment's** last known address. The **retail establishment** must pay the estimated tax, including any interest and penalty assessed by the **Director**, 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 tax due under this Section.

(f) The **Director** may inspect any records required to be kept under this Section at any reasonable time.

(g) The **Director** must deposit all taxes remitted under this Section into the stormwater management fund created under Section 19-35, after deducting the cost of administering this Article.

52-104. Interest and penalties.

(a) If a **retail establishment** does not remit to the **Director** any tax owed under Section 52-103 when due, the **retail establishment** is liable for:

(1) interest on the collections at the rate of one percent per month for each month or part of a month after the remittance is due; and

(2) a penalty of 5 percent of the amount of the collections per month or part of a month after the remittance is due, up to 25 percent of

the tax collected.

(b) The **Director** must collect any interest and penalty as part of the remittance due.

52-105. Prohibited conduct.

A **retail establishment** must not:

(a) neglect or refuse to collect or remit the tax 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 **retail establishment's** records.

52-106. Regulations.

The County Executive may adopt regulations under method (2) to implement this Article.

52-107. Enforcement.

Any violation of this Article is a Class A civil violation. Each violation is a separate offense. A conviction under this Section does not relieve a **retail establishment** from paying a remittance owed to the County.

Sec. 2. Effective Date.

This Act takes effect on January 1, 2012.

Approved:

Valerie Ervin, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 8-11

Taxation – Excise Tax – Disposable Carryout Bags

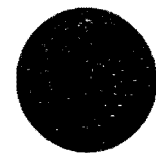
DESCRIPTION:	This bill would establish an excise tax to be levied on carryout bags that retail establishments provide to customers. The tax is set at 5 cents for each carryout bag that a retail establishment provides to a customer, of which 1 cent may be retained by the retailer to cover administrative costs. Revenues would be deposited into the Water Quality Protection Fund created under County Code Chapter 19 and used for watershed protection activities, including litter prevention and removal.
PROBLEM:	Disposable carryout bags handed out by retail businesses are among the top items found in the litter and trash stream in County neighborhoods and rivers. Litter is a public health nuisance, degrades property values, pollutes the Anacostia and Potomac Rivers, and drives up taxpayer-funded cleanup costs. The County is bound to meet a regulatory limit on trash and litter established in the Anacostia River Total Maximum Daily Load (TMDL) under the Clean Water Act. The County is also a signatory to the Potomac River Watershed Trash Treaty, committing the County to a regional effort to achieve a Trash Free Potomac by 2013. Both the Anacostia TMDL and the Trash Treaty are included as regulatory requirements in the County's 3 rd Municipal Separate Storm Sewer (MS4) Stormwater Permit. Funds are needed to address these problems.
GOALS AND OBJECTIVES:	To create a tax to help fund the County's stormwater management program to support the goals of a cleaner environment, cleaner streams and rivers in the County. Effectively transfer the burden of litter cleanup costs from tax payer to consumers, while offering consumers a choice to avoid disposable bags and bag charges by bringing their own bags.
COORDINATION:	Department of Environmental Protection, Department of Finance
FISCAL IMPACT:	See Fiscal and Economic Impact Statement
ECONOMIC IMPACT:	See Fiscal and Economic Impact Statement
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	The District of Columbia has a similar law (Anacostia River Clean Up and Protection Act of 2010).
SOURCE OF INFORMATION:	Ansu John, Division of Environmental Policy and Compliance, Department of Environmental Protection (240-777-7786).
APPLICATION WITHIN MUNICIPALITIES:	Revenue measures apply in all municipalities in the County.
PENALTIES:	Class A civil

Bill



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Isiah Leggett
County Executive

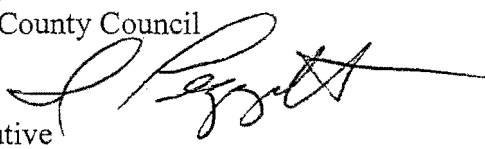
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

March 7, 2011

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2011 MAR -8 PM 3:07

TO: Valerie Ervin, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Legislation to create a Carryout Bag Tax

I am submitting for Council introduction a bill that establishes a 5-cent excise tax on carryout bags provided by retailers to customers on or after January 1, 2012. I am also submitting a Legislative Request Report and Fiscal Impact Statement for the bill. I am grateful that seven Councilmembers, including yourself and Councilmembers Andrews, Berliner, Elrich, Navarro, Reimer, and Rice have agreed to co-sponsor this bill.

Disposable bags handed out by retail businesses are among the top items persistently found in the litter and trash stream in County neighborhoods and rivers. Litter is a public health nuisance, degrades property values, pollutes the Anacostia and Potomac Rivers (our source of drinking water), and drives up taxpayer-funded cleanup costs.

The aim of the bill is to effectively transfer the burden of publicly-funded litter cleanup to consumers, while offering the consumer a choice to avoid disposable carryout bags and the bag tax by using their own bags. Tax revenues would be deposited in the County's Water Quality Protection Fund to be used for watershed protection activities including litter prevention and removal.

This bill will assist the County in funding compliance with both the Anacostia River Total Maximum Daily Load (TMDL) for trash and litter and the Potomac River Watershed Trash Treaty, under which the County agreed to participate in a regional effort to achieve a Trash Free Potomac by 2013. The Anacostia TMDL and the Trash Treaty are both included as regulatory requirements in the County's Municipal Separate Storm Sewer System (MS4) Permit.

Valerie Ervin, President
Montgomery County Council
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I look forward to working with the Council as it considers this legislation. For questions about this bill, please contact Bob Hoyt, Director, Department of Environmental Protection at 240-777-7700.

Attachments

c: Bob Hoyt, DEP Director
Jennifer Barrett, Finance Director
Marc Hansen, County Attorney



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 4, 2011

TO: Valerie Ervin, President, County Council
FROM: Joseph F. Beach, Director
SUBJECT: Council Bill XX-11, Taxation – Carryout Bag Tax

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Bill XX-11 would impose an excise tax of 5 cents on all carryout bags (with the exceptions described below) provided to customers in retail establishments, and would require that those retail establishments collect the tax and remit it to the County, less 1 cent per bag that the retailer may retain to offset the administrative cost of collecting the tax. “Carryout bags” are defined as paper or plastic bags provided by the retailer and used to carry purchases from the premises. Several types of bags are excluded from the tax: bags provided by a pharmacist containing prescription drugs; newspaper bags; bags used for garbage, pet waste, or yard waste disposal; bags provided by a restaurant for taking away prepared food or drink; and bags provided at the point of sale at a stand for a farmers market or other seasonal event.

The 5 cent bag tax is to be levied on each carryout bag the retail establishment provides to the customer (with the exclusions noted above). The taxes collected must be remitted to the County, less the 1 cent per bag retained by the retailer, on a monthly basis when cumulative bag tax collections exceed \$100 per month. For lower collection rates, remittances are not required until the cumulative tax collected since the last remittance exceeds \$100.

Bill XX-11 also specifies requirements for customer receipts provided by the retailer when the bag tax is assessed and for recordkeeping by the retail establishment, as well as interest and penalties if the tax is not remitted as required. Any violation of this bill would be punishable as a Class A civil violation.

FISCAL AND ECONOMIC SUMMARY

Fiscal Impact

Revenues: The number of carryout bags currently used in Montgomery County in one year is estimated to be 82,950,000. This figure was derived using figures from the District of Columbia’s

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800

www.montgomerycountymd.gov

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bag tax program and adjusting them for the number of retail establishments in Montgomery County. The District's first year bag tax collections of \$2.1 million translate into 52,500,000 bags (@ 5 cents per bag). Using figures from the U.S. Bureau of the Census, the ratio of the 2009 population of Montgomery County to that of the District is 1.62, and the ratio of retail trade establishments in Montgomery County to the number of such establishments in the District is 1.57. It was assumed that a comparable factor (1.58) represents the ratio of carryout bags used in the County in a year to the number used in the District. Multiplying the District's 52,500,000 bags by 1.58 yields an estimate of 82,950,000 for the number of carryout bags currently used per year in Montgomery County.

The attached spreadsheet shows how bag tax revenues have been estimated; assuming that the number of bags needed is 82,950,000. It is conservatively assumed that consumers will reduce their use of retailer-provided carryout bags by 50% during FY12, when the bag tax takes effect (the District found that bag usage fell by 80% during the first year). The remaining 50% of the bags will be provided by the retailer and will be taxed at 5 cents per bag, with the retailer allowed to retain 1 cent per bag for administrative costs. It is assumed that initially 15% of the potential bag tax revenue would be lost due to startup and collection issues, leaving the County with revenue of about \$562,000 for the 6 months of FY12 that the tax will apply.

In subsequent years, consumers are expected to increasingly avoid the need for carryout bags, resulting in the bag reduction percentage growing from 50% in FY12 to 60% in FY13 and reaching 85% in FY17. Likewise, the percentage of revenue lost to startup and collection factors is expected to fall from 15% in FY12 to 12% by FY17.

The net result is that revenue to the County from the bag tax is expected to rise to nearly \$1.08 million in FY13 (the first full year of the tax) and to fall steadily in subsequent years to about \$423,000 by FY17 as consumers use fewer and fewer non-reusable carryout bags.

Costs: The cost to the County to implement and administer the bag tax includes the development and maintenance of a web site for collecting the tax, publicity and education to be provided before and after implementation of the tax (including making free reusable bags available to seniors and others), and the addition of a position in the Department of Finance to administer the tax and the associated website. These costs are estimated to total \$354,000 in FY12 (which includes development of the web site) and \$236,200 in FY13 (the first full year of the tax), with somewhat lower amounts in the succeeding years (see the attached spreadsheet).

Net Fiscal Impact: In FY12, when the bag tax will only be in effect for 6 months and a number of large one-time startup costs will be incurred (e.g. for web site design and implementation), the net revenue produced by the tax is estimated at \$207,640. In FY13 (the first full year of the tax), projected net revenue from the tax will be \$842,150. Net revenue is projected to decline in each succeeding year as consumers use fewer and fewer non-reusable carryout bags, reaching \$216,845 in FY17. All revenue from the bag tax is to be deposited into the Water Quality Protection Fund, where it will be used to support the County's many programs and initiatives to improve water quality in the County's lakes, streams, and rivers.

Economic Impact

Bill XX-11 establishes a carryout bag tax of 5 cents for each carryout bag that a retail establishment provides to a customer, 1 cent of which may be retained by the retailer to cover administrative costs. This tax is based on the customer's economic activity, i.e., retail purchases of goods, and the cost of the tax is borne by the customer, not by County taxpayers. The economic cost to the consumer is contingent on the consumer's choice to use reusable bags or other means to carry purchases from the point of sale, rather than non-reusable plastic or paper bags. Retailers may incur operating costs to reprogram their checkout stations, train employees, upgrade their accounting systems, perform necessary recordkeeping, and send their tax collections to the County, some or all of which would be offset by the 1 cent out of the 5 cent tax per bag retained by the retailer.

Plastic bags are a persistent and consistently-found item in the litter stream, and in 2009 County agencies spent approximately \$3.3 million on litter prevention and removal programs. The goal of imposing this tax is to defray the costs of cleanup and to encourage the use of environmentally friendly options. This bill will shift the cost of cleanup from County taxpayers to the retail customers using such bags.

The following persons contributed to and concurred with this analysis: John Greiner, Office of Management and Budget; Ansu John and Bob Hoyt, Department of Environmental Protection; Robert Hagedoorn and David Platt, Department of Finance.

JFB:jg

- c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Bob Hoyt, Director, Department of Environmental Protection
Ansu John, Department of Environmental Protection
Jennifer Barrett, Director, Department of Finance
Robert Hagedoorn, Department of Finance
David Platt, Department of Finance
Marc Hansen, County Attorney, County Attorney's Office
Walter Wilson, County Attorney's Office
John Greiner, Office of Management and Budget
John Cuff, Office of Management and Budget

ESTIMATED FISCAL IMPACT OF THE BAG TAX

	FY12	FY13	FY14	FY15	FY16	FY17
REVENUE						
Number of Bags	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000	82,950,000
Bag Reduction Based on Consumer Behavior	50%	60%	70%	75%	80%	85%
Bags Subject to Tax	41,475,000	33,180,000	24,885,000	20,737,500.00	16,590,000.00	12,442,500.00
Projected Gross Bag Revenues @ \$0.05 per Bag	\$2,073,750	\$1,659,000	\$1,244,250	\$1,036,875	\$829,500	\$622,125
Less Retailer Share of Revenue @ \$0.01 per Bag	(\$414,750)	(\$331,800)	(\$248,850)	(\$207,375)	(\$165,900)	(\$124,425)
Less Revenue Lost to Startup and Collection Factors	(\$311,063)	(\$248,850)	(\$161,753)	(\$134,794)	(\$99,540)	(\$74,655)
Montgomery County Share of Revenue	\$1,347,938	\$1,078,350	\$833,648	\$694,706	\$564,060	\$423,045
GROSS PROJECTED COUNTY REVENUE*	\$561,641	\$1,078,350	\$833,648	\$694,706	\$564,060	\$423,045
COSTS						
Publicity/Bag Distribution/Education	\$120,000	\$100,000	\$95,000	\$80,000	\$70,000	\$70,000
Administrative Costs, Finance: Online Tax System	\$190,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Administrative Costs, Finance: OSC for Administrative Support**	\$40,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
Administrative Costs, Finance: Operating Expenses for OSC***	\$4,000	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
TOTAL COST	\$354,000	\$236,200	\$231,200	\$216,200	\$206,200	\$206,200
Net Fiscal Impact	\$207,641	\$842,150	\$602,448	\$478,506	\$357,860	\$216,845

*Five months in FY12, full year for FY13-17.

**Half a year in FY12.

***Operating expenses include computer, telephone, etc.

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2009 Fall
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West Group
Publisher

To protect the aquatic and environmental assets of the District of Columbia, to ban the use of disposable non-recyclable plastic carryout bags, to establish a fee on disposable carryout bags provided by grocery stores, drug stores, liquor stores, restaurants, and food vendors, to give the Office of Tax and Revenue the authority to implement rules and procedures to collect the fee, to provide for the issuance of Anacostia River Commemorative License Plates, to establish a nonlapsing fund known as the Anacostia River Cleanup and Protection Fund in which the fees, the net proceeds from the issuance of Anacostia River Commemorative License Plates, and the net proceeds from a voluntary income tax check-off are deposited, to authorize use of the fees; and to amend Title 47 of the District of Columbia Official Code and the District of Columbia Revenue Act of 1937 to make conforming amendments, including the creation of a voluntary income tax check-off.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anacostia River Clean Up and Protection Act of 2009".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Disposable carryout bag" means a bag of any material, commonly plastic or kraft paper, which is provided to a consumer at the point of sale to carry purchases. The term "disposable carryout bag" shall not include:

(A) Bags used by consumers inside stores to:

(i) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;

(ii) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;

(iii) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and

(iv) Contain unwrapped prepared foods or bakery goods;

(B) Bags provided by pharmacists to contain prescription drugs;

(C) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(D) Paper carryout bags that restaurants, as defined in D.C. Official Code § 47-2827(e)(2), provide to customers to take food away from the retail establishment;

(E) Reusable carryout bags; or

(F) Bags provided to the consumer, as required by D.C. Official Code § 25-113(b)(5)(C), for the purpose of transporting a partially consumed bottle of wine.

(2) "Fund" means the Anacostia River Clean Up and Protection Fund established by section 6(a).

(3) "Retail establishment" means any licensee under a Public Health: Food Establishment Retail endorsement to a basic business license under Chapter 28 of Title 47 of the District of Columbia Official Code or under an off-premises retailer's license, class A or B, pursuant to D.C. Official Code § 25-112.

(4) "Reusable carryout bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth, fiber, other machine washable fabric, or durable plastic that is at least 2.25 millimeters thick.

Sec. 3. Requirements for disposable carryout bags made available to customers by retail establishments.

(a) Disposable carryout bags made of plastic that cannot be recycled shall not be sold or distributed, retail or wholesale, in the District.

(b) Disposable carryout bags made of paper shall:

(1) Be 100% recyclable;

(2) Contain a minimum of 40% post-consumer recycled content; and

(3) Display the phrase "Please Recycle This Bag", or a substantially similar phrase, in a highly visible manner on the bag exterior.

(c) Disposable carryout bags made of plastic shall:

(1) Be 100% recyclable;

(2) Be made of high-density polyethylene film marked with the SPI resin identification code 2 or low-density polyethylene film marked with the SPI resin identification code 4; and

(3) Display the phrase "Please Recycle This Bag", or a substantially similar phrase, in a highly visible manner on the bag exterior.

(d) Violation of the requirements set forth in this section shall subject the retail establishment to the penalties set forth in section 5.

Sec. 4. Establishment of fee.

(a)(1) A consumer making a purchase from a retail establishment shall pay at the time of purchase a fee of \$.05 for each disposable carryout bag.

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(2) A retail establishment shall not advertise or hold out or state to the public or to a customer directly or indirectly that the reimbursement of the fee or any part thereof to be collected by the retail establishment will be assumed or absorbed by the retail establishment or otherwise refunded to the customer.

(3) All retail establishments shall indicate on the consumer transaction receipt the number of disposable carryout bags provided and the total amount of fee charged.

(b)(1)(A) Each retail establishment shall retain \$.01 of each \$.05 fee collected; provided, that an establishment that chooses to offer a carryout bag credit program to its customers, as set forth in subparagraph (B) of this paragraph, shall retain an additional \$.01 from each fee collected, for a total of \$.02 for each \$.05 fee collected.

(B) A retail establishment shall retain an additional \$.01 of each \$.05 fee for a carryout program which:

(i) Credits the consumer no less than \$.05 for each carryout bag provided by the consumer for packaging their purchases, regardless of whether that bag is paper, plastic, or reusable;

(ii) Is prominently advertised at each checkout register; and

(iii) Reflects the total credit amount on the consumer transaction receipt.

(C) The fees retained by the retail establishment under this paragraph shall not be classified as revenue and shall be tax-exempt for the purposes of Chapters 18, 20, and 27B of Title 47 of the District of Columbia Official Code.

(D) The fees retained by the retail establishment shall be excluded from the definition of retail sale under D.C. Official Code § 47-2001(n)(2) and from the definition of gross receipts under D.C. Official Code § 47-2761(5).

(E) The fees to be remitted to the District under subsection (b)(2) of this section shall be added to other tax payments in determining whether the electronic payment requirement under D.C. Official Code § 47-4402(c) applies.

(2) The remaining amount of each fee collected shall be paid to the Office of Tax and Revenue and shall be deposited in the Anacostia River Cleanup and Protection Fund established by section 6(a).

(c) The Office of Tax and Revenue shall develop rules for frequency and method for reporting and transmitting the fees, as set forth in subsection (a) of this section, to the District.

(d) Except to the extent of any inconsistency with this act, the same provisions to Title 47 of the District of Columbia Official Code that are applicable to the gross sales tax shall govern the administration, collection, and enforcement of the fee set forth in subsection (a) of this section.

Sec. 5. Rules; enforcement and penalties for violation.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue

rules to implement the provisions of this act within 90 days after the effective date of this act.

(b) If the Mayor determines that a violation has occurred, the retail establishment shall be liable for the fees under section 4(a) and:

(1) Upon the 1st violation, written warning notice that a violation has occurred shall be issued to the retail establishment. No penalty shall be imposed for the 1st violation.

(2) Upon subsequent violations, the Mayor shall impose a penalty on the retail establishment. The penalty shall not exceed:

(A) \$100 for the 1st violation after the written warning in a calendar year;

(B) \$200 for the 2nd violation in the same calendar year; or

(C) \$500 for the 3rd and each subsequent violation in the same calendar year.

(3) No more than one penalty shall be imposed upon a retail establishment within a 7-day period.

(c) If payment of any amounts due under this section is not received on or before the due date, a penalty shall be added as the Mayor provides by rule.

(d) Revenues collected through citations for violation of this act shall be used only for enforcement costs, including hiring inspectors and other staff, and administrative costs associated with enforcement of this act.

Sec. 6. Establishment of the Anacostia River Clean Up and Protection Fund.

(a) There is established as a nonlapsing fund the Anacostia River Clean Up and Protection Fund. The fees established by section 4 for disposable carryout bags and transmitted to the Office of Tax and Revenue, the net proceeds from the issuance of Anacostia River Commemorative License Plates, and the net proceeds from the voluntary tax check-off provided in D.C. Official Code § 47-1812.111c shall be deposited in the Fund. The Fund shall be used solely for the purposes set forth in subsection (b) of this section and shall be administered by the Office of the Director of the District Department of the Environment.

(b) The Fund shall be used solely for the purposes of cleaning and protecting the Anacostia River and other impaired waterways. Funds shall be used for the following projects in the following order of priority:

(1) A public education campaign to educate residents, businesses, and tourists about the impact of trash on the District's environmental health;

(2) Providing reusable carryout bags to District residents, with priority distribution to seniors and low-income residents;

(3) Purchasing and installing equipment, such as storm drain screens and trash traps, designed to minimize trash pollution that enters waterways through storm drains, with priority given to storm drains surrounding the significantly impaired tributaries identified by the District Department of the Environment;

(4) Creating youth-oriented water resource and water pollution educational

campaigns for students at the District public and charter schools;

- (5) Monitoring and recording pollution indices;
- (6) Preserving or enhancing water quality and fishery or wildlife habitat;
- (7) Promoting conservation programs, including programs for wildlife and endangered species;
- (8) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and covered trash receptacles;
- (9) Restoring and enhancing wetlands and green infrastructure to protect the health of the watershed and restore the aquatic and land resources of its watershed;
- (10) Funding community cleanup events and other activities that reduce trash, such as increased litter collection;
- (11) Funding a circuit rider program with neighboring jurisdictions to focus river and tributary clean-up efforts upstream;
- (12) Supporting vocational and job training experiences in environmental and sustainable professions that enhance the health of the watershed;
- (13) Maintaining a public website that educates District residents on the progress of clean-up efforts; and
- (14) Paying for the administration of this program.

(c) The Fund shall not be used to supplant funds appropriated as part of an approved annual budget for Anacostia River cleaning activities.

(d) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization from Congress.

Sec. 7. Public information and outreach campaigns.

Beginning on or before October 1, 2009, the District Department of the Environment shall:

- (1) Conduct an intensive public information campaign aimed at educating the public on the importance of reducing the number of disposable carryout bags entering the waste stream and the impact of disposable carryout bags on the rivers, tributaries, and environmental health of the District; and
- (2) Conduct an outreach campaign that includes:
 - (A) A public-private partnership to provide reusable carryout bags to District residents; and
 - (B) Working with service providers that assist seniors and low-income residents to distribute information and multiple reusable carryout bags to low-income households.

Sec. 8. Issuance of Anacostia River Commemorative License Plates.

(a) The Mayor shall issue reflectorized motor vehicle identification tags of a design to enhance public awareness of the District of Columbia's efforts to restore and protect the Anacostia River and these identification tags may be called Anacostia River Commemorative License Plates. These identification tags shall retain and display the "TAXATION WITHOUT REPRESENTATION" slogan of the current District of Columbia motor vehicle identification tags.

(b) In addition to the annual registration fee required by section 3(a) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat 680; D.C. Official Code § 50-1501.03(a)), a one-time fee of \$25 shall be charged each time new Anacostia River Commemorative License Plates are issued. There shall also be a \$20 renewal fee for Anacostia River Commemorative License Plates, which fee shall be charged biennially.

(c) The Mayor shall recover the cost of producing and issuing the Anacostia River Commemorative License Plates from the proceeds collected from the one-time \$25 fee and the biennial \$20 renewal fee established under subsection (b) of this section.

(d) The balance shall be paid into the Anacostia River Clean Up and Protection Fund established by section 6(a) and used for the purposes described therein.

(e) The Mayor shall implement this section within 180 days after the effective date of this act. If an extension is necessary, the Mayor shall notify the Council prior to the implementation date.

Sec. 9. Conforming amendments.

(a) Title 47 of the District of Columbia Official Code is amended as follows:

(1) The table of contents for Chapter 18 is amended by adding a new section designation to read as follows:

"47-1812.11c. Anacostia River Clean Up and Protection Fund tax check-off."

(2) Section 47-1803.02(a)(2) is amended by adding a new subparagraph (Y) to read as follows:

Amend
§ 47-1803.02

"(Y) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150)."

(3) A new section 47-1812.11c is added to read as follows:

New
§ 47-1812.11c

"§ 47-1812.11c. Anacostia River Clean Up and Protection Fund tax check-off.

"(a) For the 2009 tax year, and for each subsequent tax year, there shall be provided on the District individual income tax return a voluntary check-off that indicates that an individual may contribute a minimum donation or gift of \$1 to the Anacostia River Clean Up and Protection Fund ("Fund") established by section 6(a) of the Anacostia River Clean Up and Protection Fund Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150). The contribution shall reduce any refund owed to the individual taxpayer or increase

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the tax owed by the individual taxpayer on the taxpayer's tax return. The funds generated from the tax check-off shall be deposited in the Fund, except that any cost incurred by the Mayor in collecting, processing, accounting, or disbursing the funds generated by the tax check-off shall be reimbursed to the Mayor from the funds generated by the tax check-off.

“(b)(1) Except as provided in paragraph (2) of this subsection, any unpaid District tax liability on an individual income tax return shall render any voluntary tax check-off election void. Any amount paid for the purpose of contributing to the Fund shall be used first to satisfy any unpaid tax liability in whole or in part.

“(2) If there is any amount that remains after satisfaction of the unpaid tax liability, the amount shall be deposited in the Fund.

“(c) The Mayor shall include with the individual tax return package a description of the purposes for which the Fund was established and projects for which the Fund may be used.”.

(4) Section 47-2001(n)(2) is amended as follows:

Amend
§ 47-2001

(A) Subparagraph (G) is amended by striking the word “ or” at the end.

(B) Subparagraph (H) is amended by striking the period at the end and inserting the phrase “; or” in its place.

(C) A new subparagraph (I) is added to read as follows:

“(I) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150).”.

(5) Section 47-2005 is amended by adding a new paragraph (36) to read as follows:

Amend
§ 47-2005

“(36) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150).”.

(6) Section 47-2761(5) is amended by striking the phrase “except that beginning with the ballpark fee that is required by this chapter to be paid in fiscal year 2005 and thereafter, the calculation of the income shall not include the collection of federal or local taxes on motor vehicle fuel.” and inserting the phrase “provided, that the calculation of the income shall not include:

Amend
§ 47-2761

“(A) The collection of federal or local taxes on motor vehicle fuel; or

“(B) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150).” in its place.

(b) The District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 673; codified in scattered sections of the D.C. Official Code), is amended as follows:

(1) Section 3 of Title IV (D.C. Official Code § 50-1501.03) is amended as follows:

Amend
§ 50-1501.03

(A) Subsection (a)(1) is amended by adding a new sentence at the end to read as follows:

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“Any person ordering Anacostia River Commemorative License Plates shall pay the fees as set forth in section 8(b) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150).”.

(B) Subsection (d) is amended by striking the phrase “as established by section 3a” and inserting the phrase “as established by section 3a and the fees collected for Anacostia River Commemorative License Plates shall be deposited in the Anacostia River Clean Up and Protection Fund established by section 6(a) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2nd reading on June 16, 2009 (Enrolled version of Bill 18-150). ”.

(2) Sections 102b and 102c (D.C. Official Code §§ 50-801 and 50-802) are repealed.

Repeal
§§ 50-801, 50-802

Sec. 10. Applicability.

Sections 2 through 6 shall apply as of January 1, 2010.

Sec. 11. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 12. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

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D.C. bag tax revenue lower than expected

By: [Liz Farmer](#)
Examiner Staff Writer
September 24, 2010

The money that a tax on plastic bags was expected to generate for the District is bringing in about half of what analysts had predicted -- but those responsible for spending that revenue say it's a good thing.

"It's a trade-off," said Christophe A.G. Tolou, director of the D.C. Department of the Environment. "What we want to see ultimately is a very small revenue and very large numbers of [reusable] bags being used."

Tolou said that through August, the 5-cent fee per bag used at stores in the city had generated about \$1.5 million in revenue through August. The tax went into effect Jan. 1.

Original estimates had the tax generating nearly \$4 million during its first fiscal year, which ends Sept. 30.

"We're not going to get anywhere close to that," Tolou said.

The revenue shortfall is roughly in line with reports that disposable bag use has fallen by 50 percent -- and that's the point of the tax, its supporters say.

Elizabeth Campbell, deputy director of the [Alice Ferguson Foundation](#), said the foundation's Hard Bargain Farm on the Potomac River 10 miles south of Washington, has had less garbage to clean up since the tax started.

She said after the spring's annual shoreline restoration, during which trash trappers such as fallen tree limbs and other plant debris are removed from the shore, something different happened.

"We fully expected that all the trash would wash back up on shore and it hasn't this year," she said.

In April, the annual Potomac River Watershed Cleanup collected roughly 21,600 plastic bags -- 50 percent fewer bags than the prior year's cleanup.

Tolou noted retailers are reporting they are buying half as many bags as they were a year ago.

For consumers, the drop-off was almost immediate. D.C. residents used about 3 million disposable bags in January -- down from the average 22.5 million bags per month. Tax revenue has been averaging about \$200,000 per month.

Lou George, a downtown employee, said during the first few months of the tax he refused to get a bag when ordering takeaway food, opting to juggle his lunch items back to the office.

"Now I give in every once and a while," he said.

Tolou said the lower revenue, which is slated to help fund [cleanup efforts and clean water education](#), won't hurt those causes.

"We have alternative funding sources to help deal with these problems -- [the tax] revenue is in addition to efforts already underway," he said.

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March 31, 2011

B 8-11

**Testimony by Councilmember Tommy Wells
Ward 6 Member of the Council of the District of Columbia**

Thank you, members of the Committee, for the opportunity to testify this evening in support of Montgomery County's proposal to reduce the harmful impact of disposable carryout bags.

As you may know, I was the lead sponsor of similar legislation passed in the District of Columbia in 2009 and which has been in place for a little over one year. The Anacostia River Cleanup and Protection Act of 2009 was driven by a desire to create a cleaner Anacostia River and to reclaim it for our communities. After working with the county's team, I believe the approach before you is an improved version of the DC effort and includes valuable lessons learned from our implementation.

In short, the DC law has been an unmitigated success. The results have been proven by many measures:

- Businesses report reductions in disposable bag use by 60 and 70 percent; reducing the number of bags used and in the process, reducing the cost of doing business;
- Environmental measures report reductions of 65% in the number of plastic bags pulled from the Anacostia River and its banks;
- The independent Chief Financial Officer for the District reports a remarkable reduction in the use of paper and plastic single-use bags – dropping from 22.5 million bags used per month before the law, to 3.2 million used per month in the year after the fee took effect; and
- Revenue generated by the fee is being reinvested back into the community with trash reduction and clean up efforts along the Anacostia River and its tributaries.

The Anacostia River – noted as one of America's top ten dirtiest rivers – is a little over 8 miles long. It spans Montgomery and Prince George's counties in Maryland, as well as the District of Columbia. A majority of the tributaries and watershed are located in Maryland, with nearly 20,000 tons of trash entering the Anacostia River each year. We have a shared responsibility for restoring this waterway.

From the first ever comprehensive study of trash in the River, we learned that disposable plastic bags made up nearly 50% of the trash in the tributaries and more than 20% of the trash in the River's main stem. These conditions are not isolated to the Anacostia River and they span our region.

Maryland is justifiably proud to be defined as much by its waterways as anything else. Montgomery County claims the Potomac River and Rock Creek watersheds, and across the state, the many other rivers and streams ultimately find their way to the Chesapeake Bay – carrying all the associated trash and pollutants to the same place.

Just like the District of Columbia, the state of Maryland and its local governments, sponsors trash cleanups along the rivers, supports a robust recycling program, and pours millions and millions of public dollars into trash removal. These are good efforts, but they have clearly failed to eliminate the pollution in our rivers. They only target the trash once it's already been created – rather than trying to reduce trash at its source.

Customers have adapted to the change in DC quickly and with relatively few complaints. The 5-cent fee has proved to be what it was intended – a price to get into your head, not your wallet. It makes the consumer pause and have an opportunity to decide if they need the disposable bag. It also no longer hides the cost of a disposable bag in the goods we purchase and gives more power to the consumer.

We have a shared responsibility, a shared stewardship and a shared hope for our rivers and waterways. I am very proud of the progress we're making in the District of Columbia and I believe this law can do for Montgomery County and your waterways, what our law is doing for DC and the Anacostia River.

I hope that our two governments can stand together in shared stewardship for the health of the entire Chesapeake watershed.

Thank you and I'd be happy to answer any questions you have.

CARRYOUT BAG TAX

BILL 8-11

MONTGOMERY COUNTY, MARYLAND

MONTGOMERY COUNTY COUNCIL



Christopher Carew, Chief of Staff, DC Water - Testimony before the Montgomery County Council

Good evening, President Valerie Ervin, and members of the Council. I am Chris Carew, Chief of Staff for DC Water. Thank you for the opportunity to present testimony on trash reduction and control in Montgomery County, Maryland and in particular, Bill 8-11, the "Disposable Carryout Bag Bill."

Trash Pollution in Waterways

The Potomac River is the fourth largest river along the Atlantic coast and flows into the Chesapeake Bay. The river forms part of the borders between Washington, D.C. and Virginia on the left descending bank and Maryland and Virginia on the river's right descending bank. The Potomac is the principal source of drinking water for Washington, D.C., residents, businesses and visitors. DC Water recognizes the importance of the Potomac River and its tributaries to the region's quality of life. These waters provide vital environmental, economic and social benefits to the citizens in this county and state. These benefits, however, are severely impaired by the many forms of trash carried by the Potomac and its tributaries, such as the Anacostia River.

The Potomac endures an array of assaults from the air, water and land. Trash is a component of the pollution currently fouling the Potomac's waters. While the aesthetic impacts of trash are clear to all who visit the area's waterways, trash can also cause environmental harm to fish, plants, and wildlife that become entangled in, or mistake trash for food. The county should be commended for its commitment to the Potomac River Watershed Trash Treaty and the "Trash-free Potomac River by 2013" as written into the County's legally binding stormwater permit (Montgomery County's Municipal Separate Storm Sewer System (MS4) permit). However, these efforts are not enough to remove the Potomac off EPA's list of the most endangered waterways.

Bill 8-11 is a fundamental key piece of legislation that will further advance the Potomac's overall clean-up effort. The amount of litter and trash present in the Potomac River is substantial enough to warrant this legislation.

The Behavioral Effects of Bill 8-11 on Trash Pollution

As you may be aware, the District enacted the "Anacostia River Cleanup and Protection Act of 2009" last year which similarly focused on disposable shopping bags. Data indicated that plastic bags accounted for nearly half of the trash found in streams in the Anacostia watershed, and over 20 percent of the trash in the primary stream of the Anacostia. In some streams in the watershed, such as Watts Branch, surveyors observed a plastic bag every 1.2 feet as they walked the stream banks. The D.C. tax charges shoppers 5 cents per bag, revenue the city has earmarked to clean up the polluted Anacostia River.

The bottom line is that it has worked -- even more than any of us imagined. The city estimated that 22 million plastic bags were used per month before the bag fee. In the first month with the fee, the city estimates people used 3.3 million bags - an extraordinary decline of more than 18 million bags, or about 85%! In addition, business owners have reported little harm to their bottom line and in some cases saved money because they are buying fewer bags. The city earned about \$2 million from the tax.

The Seattle Times

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Seattle voters don't buy shopping-bag charge

By Marc Ramirez
Seattle Times staff reporter

Seattle voters firmly rejected Referendum 1, which would have made Seattle the first city in the nation to go after both plastic and paper shopping bags.

The defeat — 58 percent to 42 percent, with more than half of the expected votes counted — means an ordinance passed by the Seattle City Council last year will not take effect. Had Referendum 1 passed, grocers, convenience marts and drugstores would have charged shoppers 20 cents for each bag they were provided at checkout counters.

Supporters of the charge pinned the loss on a heavily funded opponent that outspent them 15-to-1, but they said the campaign had laid the grass-roots foundation for future efforts.

"Big money can come in and run deceptive scare campaigns, but in the end, people who care will defeat the people who scare," said Green Bag Campaign spokesman Brady Montz.

Most of the anti-fee campaign's \$1.4 million came from the Virginia-based American Chemistry Council. Seattle Ethics and Elections Commission staff said that group's \$500,000 contribution in mid-July was the largest for a local ballot measure in recent history.

"I think the results confirm what the coalition has said from the beginning, that it was a costly and unnecessary tax," said Adam Parmer, spokesman for the Coalition to Stop the Seattle Bag Tax. "I think you saw Seattle voters saying that this was not the right approach to protecting our environment."

The city hoped the 20-cent charge would encourage Seattle consumers to stop using throwaway shopping bags and instead take their purchases home in recycled bags or reusable totes, reducing waste.

Stores with annual revenues of less than \$1 million would have kept the 20 cents to cover their costs, while those grossing more would have kept 25 percent and passed the rest on to the city for recycling, environmental education and reusable bags for low-income consumers.

The City Council ordinance was to take effect this year, but opposition forces quickly collected enough signatures to put the issue before voters.

Opponents regularly labeled the charge a tax rather than a fee and called it unnecessary and misguided. They said it would backfire — that as throwaway bags were phased out, people who now reuse them at home in various ways would start buying sturdier plastic bags that are even worse for the environment.

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A nickel-and-dime distraction from Montgomery's real problems

By Nancy Floreen, Friday, March 18, 7:09 PM

If I believed taxing carryout bags in Montgomery County would improve local water quality and protect our waterways, I would be the first to sign on. But the five-cent tax on both paper and plastic bags proposed by County Executive Ike Leggett won't save the Chesapeake Bay. What's worse, it would have unintended consequences — some silly, some serious.

And if the tax wouldn't save our streams, then it better save our equally stressed budget. But it wouldn't do that, either. It would give Montgomery County residents nothing while leaving them, well, holding the bag.

A study by the Alice Ferguson Foundation, an environmental and education group working to clean up the Potomac River, showed a drop in bag use after the District's bag tax went into effect last year, but it's important to note that the effect on city waters has not yet been quantified; a reduction in bags does not necessarily mean a reduction in litter.

As a dog owner, I put my old grocery bags to good use a second time, and that makes me one of the 90 percent of consumers who reuse their grocery bags at least once. Taxing people who already exercise good judgment isn't going to change the attitudes of rogue litterbugs.

My larger concern, though, is that this tax — which will come up for a public hearing on March 31 — is regressive, placing the heaviest burden on those with the lowest incomes. The added expense of paying

the tax or buying reusable bags may not be much of a problem for the wealthy; not so for families already having a hard time making ends meet. I foresee scenes in which residents, perhaps senior citizens, overload their shopping bags to save money, only to spill groceries all over the sidewalk on the walk home. That's not saving anybody's environment.

And speaking of environments: The one inside a reusable bag is perfect for growing bacteria and cross-contaminating food, so if you opt against paying for disposable bags, you had better remember to wash your reusable ones. Do you really want to carry home unwashed chicken or seafood in a bag you might be carrying apples in later?

But most important, this proposal is a distraction from the fiscal crisis we must face right now. To literally nickel-and-dime residents this way might bring in \$1.5 million in revenue under the best-case scenario, but that's a drop in the bucket compared with the huge shortfall Montgomery County is confronting.

Don't get me wrong. I have real concerns about the environment, and I agree we should look at viable solutions to our pollution problems. That might mean reexamining the Water Quality Protection Charge that residents already pay as a part of their property tax bill and which has a proven track record of success.

Right now, though, we need to focus our time and attention on how we can maintain needed services, treat employees fairly and invest in our future, all while slashing spending. That's our real mandate.

I say, bag this tax.

Bill 8-11

Taxation – Excise Tax – Disposable Carryout Bags

Public Hearing

March 31, 2011

Good evening. My name is Bob Hoyt and I am the Director of the Montgomery County Department of Environmental Protection. I am testifying on behalf of the County Executive in support of Bill 8-11, Taxation - Excise Tax - Disposable Carryout Bags.

This bill imposes a 5-cent tax on carryout bags provided to customers by certain retail businesses. It is modeled after the District of Columbia's highly successful Anacostia River Clean Up and Protection Act (District Law). We have consulted with the District's Office of Taxation and Department of the Environment as well as other jurisdictions that are considering similar legislation.

This bill is not a source of revenues for the County's General Fund. Revenues will be used to distribute reusable bags to low income and senior residents and for other outreach and education efforts that promote the use of reusable bags. Any remaining revenues will be deposited in the County's Water Quality Protection Fund and used to offset the cost of cleaning up our streams and rivers. In 2009, the County spent approximately \$3.3 million on litter prevention and removal programs.

If customers use their own bags, no tax will be imposed. For those who need assistance with obtaining reusable bags (e.g., low income and senior residents), the County will provide them for free. If a customer chooses to have a store supply plastic or paper carryout bags, the customer will pay 5 cents per bag. For example, a customer will pay 30 cents if a grocery store supplies 6 bags for a weekly shopping trip.

As in the District, covered businesses will keep 1 cent of the 5-cent tax for administrative costs. Seventy percent of businesses covered by the District Law have seen either no or a positive fiscal impact, according to a survey reported in the Washington Post. Consumers can also save money. Not stocking bags allows stores like Costco, Sam's Club and Aldi's to charge discount prices. Customers of these types of businesses have shown that there are reasonable alternatives to carryout bags.

The bill's revenues will shift some of the cost of litter clean-up to those who use the bags that can end up in streams. As consumers become accustomed to the program, they will use fewer bags and revenues will decline, as will the pool of bags available for littering.

Reducing the trash that pollutes our streams, clogs our storm drains, and ruins the natural beauty of our County is a requirement in the County's stormwater permit issued by the State under the federal Clean Water Act. It is also a requirement of the Trash Free Potomac Treaty and is necessary to meeting the Anacostia River's Total Maximum Daily Load (TMDL) limit.

We welcome the opportunity during T&E Committee work sessions to describe our strategy for distributing reusable bags to low income and senior residents, encouraging people to properly care for

reusable bags, and dispelling the myth that the District Law covers only grocery stores (in fact, it covers stores like Macy's, Best Buy, Neiman Marcus, Staples, Lord and Taylor, Walgreens and all others that have food licenses). Officials from the District's Office of Taxation and Department of the Environment have supported us throughout the bill's drafting stage and have agreed to answer any of Council's questions about the District Law.

Thank you for the opportunity to testify in support of this bill.



ANACOSTIA WATERSHED SOCIETY

Testimony on Bill 8-11 Taxation Excise Tax -Disposable Carryout Bags Position: Favorable

March 31, 2011
Montgomery County Council

Anacostia Watershed Society supports Bill 8-11, Disposable Carryout Bags, which would levy a five-cent tax on paper and plastic carryout bags given at checkout at retail establishments. This bill reflects a highly successful model implemented in Washington, DC.

In 2008 there was an extensive study of trash in the Anacostia River watershed. About 80% of the land area of the Anacostia River lies in Montgomery and Prince George's Counties, and the trash study found that **47% of trash in tributary streams was plastic bags**. [See attached excerpt from Anacostia Watershed Trash Reduction Plan.]

This study of trash in the Anacostia River inspired action by the Council of the District of Columbia, and the resulting legislation serves as an inspiration for Bill 8-11. DC implemented their 5 cent disposable bag fee on January 1, 2010, and since then:

- DDOE estimates plastic bag distribution is down 80%
- Residents have reduced disposable bag use by 75%
- Most businesses report that their distribution of bags has dropped at least 50%
- 78% of businesses reported a positive or neutral effect of the bag fee
- 66% fewer bags were pulled from DC rivers and streams compared to 2009
- Approximately \$2 million was raised for environmental cleanup

These numbers prove that the bag fee model works.

I applaud County Executive Leggett's support for this bill as a clear commitment to the Potomac River Watershed Trash Treaty, which he and at least five members of this council are signatories to. The Treaty's goal of a Trash Free Potomac by 2013 is just around the corner and the time is now to enact meaningful policies that have been proven to work. Furthermore, the bill will also help the county meet Anacostia trash TMDL obligations under its Clean Water Act permit.

The *Wall Street Journal* further estimates that U.S. business spend \$4 billion annually to purchase "free" bags to distribute to consumers. Based on the best available data, the Anacostia Watershed Society estimates that Maryland residents consume about 3.6 billion plastic bags a year, or about 750 bags for every resident over age 5. In a 2007 *New York Times* article, Giant Foods said that their plastic bags cost 2 cents each. An extensive study of plastic bag use in

California concluded that consumers pay 2 to 5 cents per bag at national retail chains such as Target and Wal-Mart. Combining these usage rates and cost figures, we can estimate that **the average Marylander pays \$15 to \$37.50 in hidden costs for “free” plastic bags.** Contrast this with the cost of reusable bags, which sell for \$1-\$3 each and last about two years. A consumer using 3 reusable bags per year would experience a **direct yearly cost of reusable bags of \$1.50 to \$4.50.**

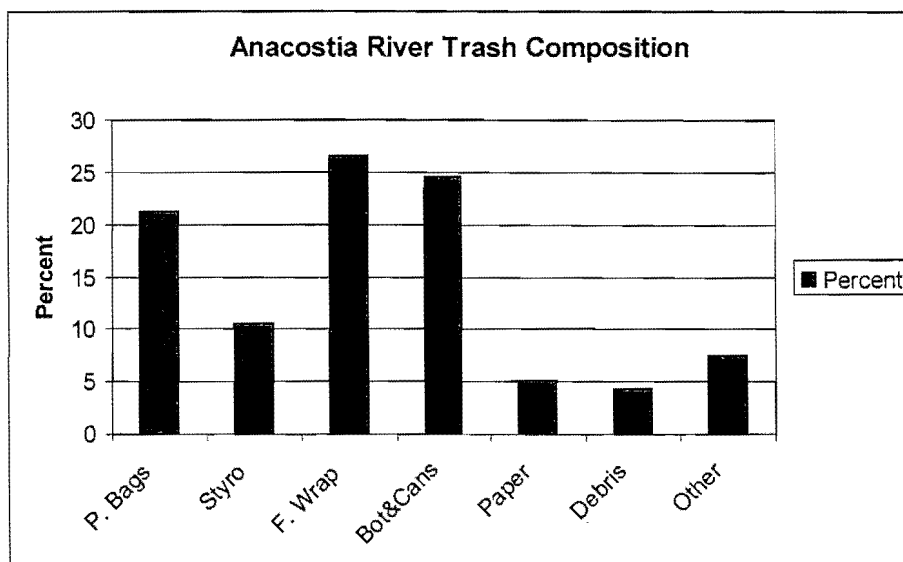
This bill makes sense because it takes a hidden cost, passed on by retailers to consumers, and makes that cost known to consumers. Under this bill consumers have the choice of whether or not to spend 5 cents on a disposable carryout bag. Contrast this with current retail practice where prices are higher for everyone, across the board, so that the business can absorb the cost of the “free” disposable bags. **Bill 8-11 is pro-consumer** because it gives people a choice about whether or not to pay for disposable carryout bags: if you don’t want to pay the proposed bag tax, you never have to. Right now, consumers really pay for the bags twice - once at store and then again in the environmental damage and cleanup costs.

Bill 8-11 is also pro-business – small businesses in particular report large savings due to not having to buy and distribute so many free bags. Chains such as Aldi already charge for bags for exactly this reason, and only customers that really want bags have to pay for them.

The bag fee is a simple policy that has a profound effect on reducing trash while also empowering consumers to avoid hidden costs passed on by retailers.

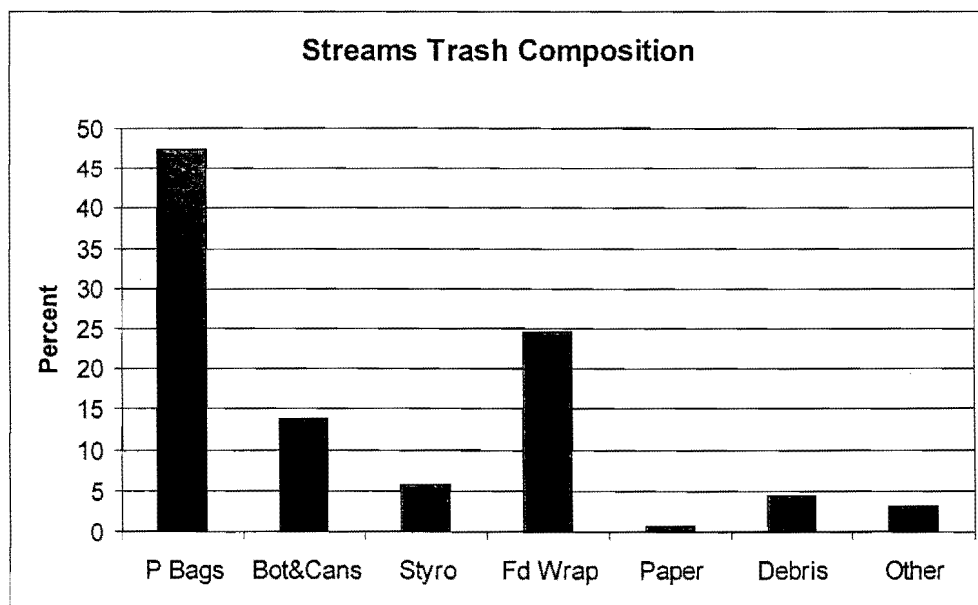
Anacostia Watershed Society supports BILL 8-11 and respectfully urges a favorable vote.

Figure 3
Anacostia River Trash Composition



In the tributary streams, the plastic bags dominate all other categories (Figure 4). This appears to be related to the amount of brush and vegetation that will snag the bags. Bottles and cans, Styrofoam and snack wrappers are also prevalent. Paper products are not found in the streams except in very localized areas.

Figure 4
Stream Trash Composition





Clean Land, Safe Water, Healthy Lives



Thursday, March 31, 2011

Montgomery County Council

Laura Chamberlin, Program Manager, Alice Ferguson Foundation
Trash Free Potomac Watershed Initiative

Montgomery County Carryout Bag Fee

Thank you for conducting this important public hearing concerning the **five cent fee on carryout, single-use carryout bags**. The Alice Ferguson Foundation, an environmental education nonprofit based in southern Prince George's County has been working with our partners at the Trash Free Maryland Alliance to end the litter and trash problem, not just through cleanups but also through actions to end litter at its source. Plastic bags are a significant source of trash throughout the state, on the land and in the water.

The Alice Ferguson Foundation and our partners have been coordinating the Potomac River Watershed Cleanup in April for the past 22 years. In 2010, over 500,000 pounds of trash were removed from Maryland, District of Columbia, Virginia, Pennsylvania, and West Virginia. This grassroots effort was accomplished through the help of more than 14,537 volunteers and over 400 organizations, agencies, communities and businesses.

These Cleanups have made a contribution to improving our waterways - but they are not the solution. AFF has established a goal for a *Trash Free Potomac by 2013* and believes it can be achieved - by addressing the problem through a *collaborative and integrated Watershed approach*. Working with our key stakeholders including elected officials, jurisdiction agencies, nonprofit partners, businesses and citizens we have been pursuing solutions through our five component framework which includes Regulation, Enforcement, Market-Based Solutions, Public Education, and **Policy**. In 2005, to support this integrated approach the *Potomac Watershed Trash Treaty* was established, committing signatories to the need to address the trash and litter problem in the Potomac River Watershed. To date, **161 elected officials, including 11 from Montgomery County**, have signed. A bag fee in Montgomery County would be a great step towards achieving the goals set forward by this *Trash Treaty*.

Policies like a five cent fee on single-use bag fees can be a highly effective way to change behavior and reduce litter in our watershed. It is an example of both a policy and a market-based solution. AFF and our partners have seen it to be effective in the District of Columbia. In our 2010 Cleanup, our volunteers recorded 66% less plastic bags on District of Columbia sites after the implementation of the bag fee began. In addition to litter reduction, the social research firm, OpinionWorks conducted an public opinion survey of **600 DC residents** which was carefully balanced against the Census Bureau's estimate of the city's demographics. The survey showed that 75% of citizens report a reduction in their bag use. That's less bags being used and ultimately less bags being littered.

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However, a bag fee is not just about the customer, but the business. 51 interviews were conducted among on-site managers of businesses that are responsible for implementing the bag fee. Businesses in all wards of the city, large and small, locally-owned and chains, and across various sectors that are subject to the law were interviewed. **78% of businesses interviewed reported either positive or neutral impacts, and only 12% of businesses interviewed were negatively impacted.**

Several of the businesses interviewed in the fall of 2010 by OpinionWorks, were willing to share their experience with the bag fee in the District of Columbia.

General Manager of Books-a-Million, Guy Christman, stated that they have saved an estimated \$1750 from 2009 to 2010, as their customers have reduced their plastic bag use by nearly half. Christman stated that "helping to keep the city clean by using reusable totes for their shopping here and at other businesses has become a desirable habit for many of the residents and visitors who shop at our store." Books-a-Million is a corporate chain operating in DC, Maryland, and other states in the region.

Thomas Bowes, the owner of Hayden's Liquor, a small privately owner liquor store in SE DC stated that their costs for bags have gone from \$1000 to about \$200. These costs savings are "A welcome change and lets us put the difference to better use." Bowes went on to say that "most customers agree with the tax and support the effort to reduce waste, litter, and cleanup costs."

These are just two businesses amongst others, who said that the positives from the bag fee have included cost savings and a reduction in litter. When asked what more could the City do to help implement the bill, many businesses stated that they would like more information and outreach so that customers better understand the bill and where the money is going. Montgomery County can learn from this experience with a complete explanation of the bill and the use of the funds.

In addition to the District businesses MOM's Organic Market, a Maryland business is also in support of this bill. In 2005, MOM's stores stopped offering plastic bags to customers at the register in order to discourage the unnecessary use of disposable bags and the pollution they cause before, during, and after production. In 2007 MOM's implemented a bag-credit program, of 10 cents for every reusable bag that was used. Since then, the percentage of reusable and re-used plastic and paper bags used by MOM's customers has increased significantly over the years. MOM's customers re-used over one million bags within the last two years. In the last year, before the credit was paid out, MOM's has saved \$75,000 from the reduction in bag use. After the credit, they still saved nearly \$10,000.

AFF and our partners at the Trash Free Maryland Alliance recognize that policies are not the only solution, just as Cleanups are not the only solution. We must all work together on all the solutions in order to solve the problem. This bill is an essential piece to the puzzle and can lead to a reduction in litter, cost savings for businesses, and the funds that are raised will used to work towards solving many environmental issues. We urge you to support this bill.

Among the **current elected officials in the Montgomery County signatories including** Isiah Leggett, County Executive; Phil Andrews, Councilmember; Roger Berliner, Councilmember; Valerie Ervin, Councilmember; Nancy Floreen, Councilmember; George Leventhal, Councilmember; Nancy Navarro, Councilmember; Craig Rice, Councilmember; Sidney A. Katz, Mayor, City of Gaithersburg; Bruce Williams, Mayor of Takoma Park, MD; Terry Seamens, Council Member, City of Takoma Park.



FOR IMMEDIATE RELEASE

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Alice Ferguson Foundation
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STUDY OF U.S CAPITAL'S PLASTIC BAG FEE INDICATES BEHAVIORAL CHANGE AND POSITIVE SUPPORT

Research Shows Litter is a Widespread Issue for Washington, D.C Residents and Businesses

Washington, DC (February 23, 2011) — Today, Alice Ferguson Foundation (AFF), a leader of the Trash Free Potomac Watershed Initiative and environmental education in the Washington, D.C. metro area, released data from research on ***"Public Perceptions and Willingness to Address Litter in the District of Columbia"***. The research examines current opinions and perceptions of the District of Columbia citizens and business community on litter and public policy approaches, with special attention to the city's bag fee.

The research, funded by the District Department of Environment (DDOE), concluded:

- Littering is a widespread problem in the District, with as many as four in ten residents actively littering;
- Unwanted litter is a problem for many of the District businesses surveyed; it results in increased operational costs; and
- The recent D.C. bag fee has been overwhelmingly effective in changing behavior, with **75%** of District residents reporting a reduction in their bag usage; and businesses reporting drastic reductions in bag usage.

"The public opinion poll provided us with valuable information that will help to inform our ongoing litter prevention programs," said Tracy Bowen, with the Alice Ferguson Foundation, "The results from this survey prove that behavior can be changed and that our upcoming cross-jurisdictional litter prevention campaign *will* have an impact."

AFF has a goal for a trash free Potomac Watershed by 2013, and is collaborating with government and business partners throughout the region to prepare a regional litter prevention campaign set to launch this spring. The research released today is an important part of this larger effort to gather valuable insights and understanding. It will allow AFF to design strategies to challenge regional citizens to think about their actions and to change their littering ways.



Research Methodology

AFF worked with social marketing research firm, OpinionWorks, to gather public opinion and business community data through three approaches: 1) telephone opinion poll of 600 randomly-selected District of Columbia residents throughout all eight wards; 2) focus groups of citizens who were admitted litterers; 3) one-on-one interviews with 51 D.C.-based business owners and managers to assess their first hand experience in implementing the bag fee, as well as their experience with litter and trash. 90% of the companies interviewed are regulated by the bag fee and include such businesses as liquor stores, convenience stores, coffee shops, grocery stores, restaurants/carryouts, hotels, large retail stores and institutions.

Key findings of the research included the following:

Litter is a Problem for Citizens and the Business Community

Littering is a widespread problem in the District, with many citizens admitting to engaging in this behavior and many others observing it and bothered by it. Likewise many District business owners and managers stated that littering has impacts on their business.

- 68% of citizens report that they see others tossing litter on the ground or in water often or sometimes. Between 12% to 40% of citizens reported that they litter, depending on the type of litter.
- While 85% know littering is against the law, only 7% think there is a good chance a litterer will get caught.
- Unwanted litter is a problem for 40% of the District businesses interviewed, with 23% of businesses stating that they commit resources to cleaning up trash around their property.
- When asked what the City could be doing to help businesses deal with the litter problem, most want more street and sidewalk sweeping, and some ask for better law enforcement of anti-littering laws.

Five-Cent Bag Fee Drastically Changes Citizen Behavior:

In January 2010, the *Anacostia River Cleanup and Protection Act of 2009*, placed a five-cent fee on plastic and paper bags in businesses selling food or alcohol throughout the nation's capital. AFF's research shows that the bag fee has drastically changed behavior of citizens in their bag usage, and found overwhelming positive support for this law.

"Through AFF's research, we were able to gather opinions from residents and a diverse set of businesses impacted by the bag fee" said Christophe Tulou, Director, DDOE. "Responses were favorable and knowledge of the five-cent fee seems to be close to universal. The bag fee is an extraordinary example of how public policy can have a positive impact for our environment."

- 75% of District residents respondents polled indicated that they have reduced their bag use since the fee was introduced in January 2010.
- A majority of businesses said their consumption of bags is at least 50% lower as a result of the fee.



- 78% of businesses had neutral or positive responses to the how the bag fee was impacting their businesses -- 58% of businesses survey reported the bag fee has not affected their business at all; 20% said it has affected their business positively. Only 12% of business owners and managers said the bag fee has affected their business negatively.
- When asked specifically what positives they see from the law, business owners and managers mentioned a reduction in litter and a benefit to their bottom line as they had to spend less on bags.
- When asked specifically what negatives they see from the law, business owners/managers mentioned that some customers complain about the 5-cent fee, and that they are skeptical about where the money goes within the DC government.
- When asked what the District of Columbia can do to better help the business community implement the law, the greatest response by businesses is for the DC government to provide more publicity of the law, which explains the fee to customers and how the government is using the fee.

For further information on the AFF research, please visit www.fergusonfoundation.org or call 202.973.8203.

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About Alice Ferguson Foundation

The Alice Ferguson Foundation (AFF) was established in 1954 as a non-profit organization chartered in the state of Maryland. Its mission is to provide experiences that encourage connections between people, the natural environment, farming and the cultural heritage of the Potomac River Watershed, which lead to personal environmental responsibility. AFF shares the wonder and excitement of the Potomac River, a 330-acre working farm (Hard Bargain Farm), woods and wetlands each year with more than 10,000 students from the Washington, DC Metropolitan Area.

The ***Trash Free Potomac Watershed Initiative*** (TFPWI) is a region-wide effort spearheaded by the Alice Ferguson Foundation to reduce trash and litter, increase recycling, education, and awareness of trash issues in the Potomac Watershed. The primary goal of TFPWI is to create a "Trash Free Potomac by 2013." The goals of TFPWI are being addressed through the *Potomac River Watershed Trash Treaty*, *Annual Potomac River Watershed Trash Summit*, *Annual Potomac River Watershed Cleanup*, and *Regional Public Education & Awareness Campaigns*. For more information on these programs or to volunteer, visit www.Fergusonfoundation.org or call (202) 973-8203 and (301) 292-5665.



About OpinionWorks

OpinionWorks conducts frequent opinion studies in Maryland and the surrounding states. They are the polling organization for *The Baltimore Sun*, having accurately forecast the 14-point gubernatorial margin in 2010, and have polled for numerous other media throughout the region. They work for state and local agencies throughout the Mid-Atlantic, and for a variety of non-profit and for-profit entities within the region and nationally. For more information, please visit www.OpinionWorks.com.

About District Department of the Environment

The District Department of the Environment funded this research to further the District of Columbia's understanding of how citizens are affected by litter, examine the effects of government policy, and develop a strategy for changing the behavior of those citizens and visitors to the District who dispose of their trash improperly. DDOE is the lead District agency for compliance with federal Clean Water Act requirements, including requirements for pollution caused by trash. The EPA has issued a Total Maximum Daily Load (TMDL), or trash diet, for the Anacostia Watershed. This is a first in the Nation multi-state TMDL for trash, which includes Maryland's Prince Georges and Montgomery Counties and the District. In addition DDOE is the lead agency for implementing the Anacostia Clean Up and Protection Act. This legislation place a \$0.05 fee on all non-reusable bags sold at stores that sell food and/or alcohol. Revenues from the fee are administered by DDOE and used to restore and protect the Anacostia River and other District waterways.

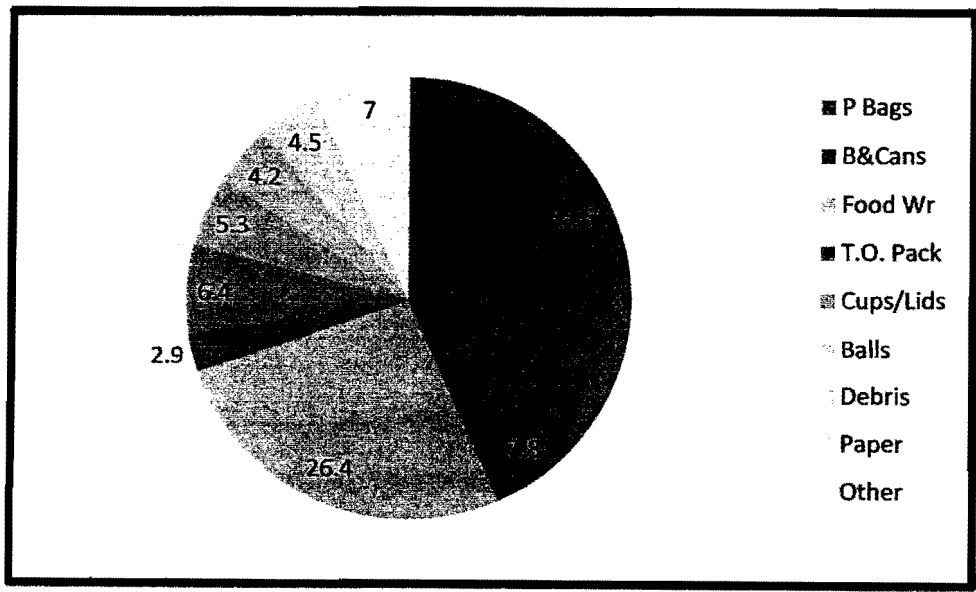
DISPOSABLE CARRYOUT BAGS

Bill 8-11

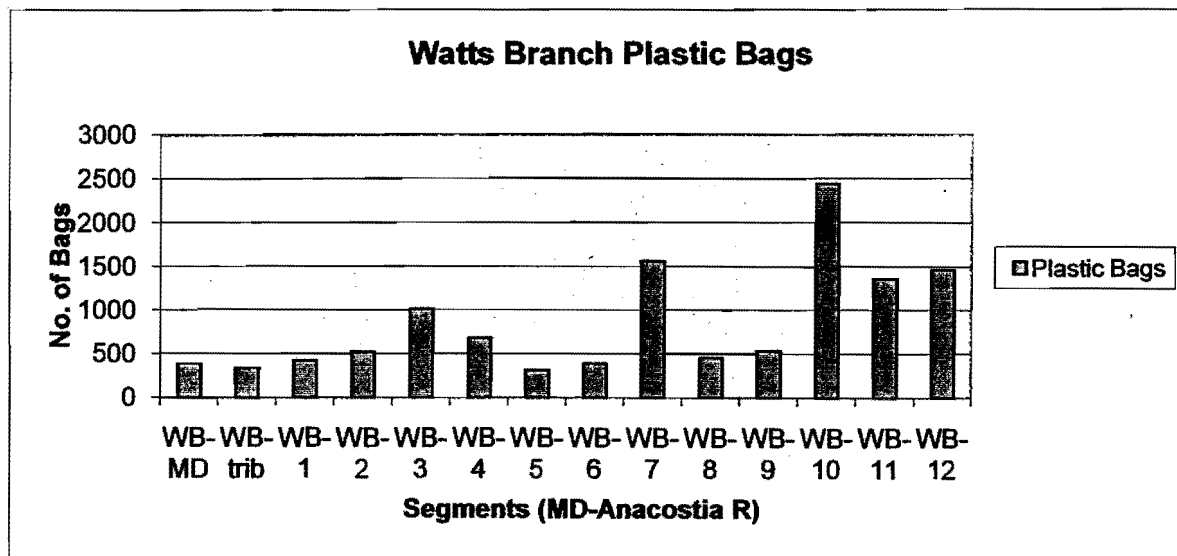
Good Evening, I am James Collier from the District of Columbia. Until my retirement I was chief of the District of Columbia Environmental Programs. After my retirement, my daughter and I conducted the monitoring program that provided the data for DC Bag Bill and then we conducted the monitoring that provided the data for the DC portion of the Anacostia Trash TMDL. I am going to testify about a study on trash that we performed under contract to the Anacostia Watershed Society. The study was funded by EPA to determine the trash accumulations in the Anacostia Basin at bridges in the Maryland's Paint Branch watershed. Four bridges were selected in Montgomery and Prince Georges Counties and each month for a year the amount of trash was removed from the upstream opening of the bridges and inventoried.

This study showed that out of 512 items that became lodged at the upstream opening, 182 were plastic bags. The plastic bags accounted for 35.5 percent of the trash that one would see at a bridge abutment in Maryland. The next most prevalent item was the food wrappers and they accounted for 26 % of the items. The study demonstrates that plastic bags are a serious component of trash in Maryland streams.

Figure 1- Composition of Trash at Maryland Bridges



During the first study we performed for DC, we conducted two surveys of sties in Maryland and the most interesting was Watts Branch in PG just above the DC line (Segment WB-MD). That segment had a length of 461 feet and an average of 387 bags, which is one bag for every 1.2 feet of stream channel.



I would mention that I live in the Rock Creek Basin and often travel up to the Lake Needwood Park. These areas are not immune to plastic bag litter.

Thank you for the opportunity to testify today.

My name is Marty Ittner and I am steward of section 2 of Sligo Creek in Takoma Park. Each spring and each fall Friends of Sligo creek organizes a clean up. Every year there is plenty of trash, including plastic bages. But we also use hundreds of plastic bags for collecting the trash.

4

A recent New York Times editorial* called; "Plastic, Too Good to Throw Away" cites:

"Plastic bags litter parks and threaten wildlife on land and at sea. Such problems have fueled bans on bags around the world. Unfortunately as the plastics industry incessantly points out, the bans typically lead to a huge increase in the use of paper bags, which also have environmental drawbacks. But the bigger issue is not what the bags are made from, but what they are made for. Both are designed—absurdly—for that brief one-time trip from the store to the front door.

It's estimated that half of the nearly 600 billion pounds of plastics produced each year go into single-use products. Some are valuable, like disposable syringes. Yet many disposables, like the bags, drinking straws, and lighters commonly found in creek clean-ups, are essentially prefab litter with a heavy environmental cost. And there's another cost. Pouring so much plastic into disposables has helped to diminish our view of materials we once held in high esteem. Plastic has become synonymous with cheap and worthless, when in fact those chains of hydrocarbons ought to be regarded as among the most valuable substances on the planet. If we understood plastic's true worth, we would stop wasting it on trivial throwaways and take better advantage of what this versatile material can do for us."

We need to look at plastic as a valuable resource, too good to throw away. As we have witnessed proven results in DC, a bag tax will achieve this goal.



* New York Times Op-Editor

Plastic: Too Good to Throw Away

By SUSAN FREINKEL Published: March 17, 2011

Marty Ittner

marty@m-art.us

41

**Testimony of Diane Cameron
for the Montgomery County Stormwater Partners Network
and the Natural Resources Defense Council**

re: Bill 8-11, Disposable Carryout Bags
Montgomery County Council Hearing on 3/31/11

Position: Favorable.

My name is Diane Cameron, and I am co-chair and testifying on behalf of the Montgomery County Stormwater Partners Network. The Stormwater Partners are a network of 22 member organizations who collectively represent more than 50,000 Montgomery County residents. We are joined in this testimony by the Natural Resources Defense Council. The Stormwater Partners' mission is to protect and restore Montgomery County's waters.

We ask for your strong support for this legislation, for these reasons:

- * Montgomery County is estimated to use about **83 million carryout bags per year**.
- * It's estimated that only about 3% of plastic bags are actually recycled.
- * Until we address the bags that are not recycled, too many of them end up in storm drains and then rivers because of improper disposal or intentional littering.
- * When the District of Columbia instituted a bag fee, use of plastic bags dropped from 22 million to just 3 million per month.
- * The fee sends a price signal that urges consumers to reuse bags.
- * A net positive fiscal impact is estimated for this bill. Revenues are projected to exceed costs for each of the next five fiscal years.
- * This bill should enable a reduction in the amount we spend on trash programs, estimated at \$3.3 million per year.
- * The legislation will take the revenue generated by the fee and put it in the Water Quality Protection Fund, to pay for local stream restoration and education activities.
- * This bill is needed to enable us to fulfill part of our local stormwater permit mandates, which require Montgomery County to:

"...support and implement regional strategies to reduce trash..."¹
and to:

"...develop a trash reduction strategy and work plan for the Montgomery County portion of the Anacostia Watershed."²

If we fail to enact this legislation this year, we could be forced to find other, costlier ways to meet our trash reduction mandates. We ask for your support for Bill 8-11.

¹ Maryland Department of the Environment, National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Discharge Permit Number 06-DP-3320/ MD0068349. Issued to Montgomery County on February 16, 2010. Part III.E.4, Trash and Litter, sections a. and c.

² Ibid.

Testimony of Fritz Hirst
Concerning Bill 8-11 – Taxation – Excise Tax – Disposable Carryout Bags
Montgomery County Council
March 31, 2011

Thank you. I'm Fritz Hirst. My family and I live in Chevy Chase near the banks of Rock Creek which we cherish and protect.

I speak as an individual in opposition to the bag tax because I believe in freedom and personal responsibility and because the overwhelming majority of us care for our environment and always take care to reuse, recycle, or properly dispose of carryout bags.

I also use cloth carryout bags like this one made in China which Delegate Carr gave me as a supporter.

Councilmember Floreen put it best when she said in the Washington Post that, "Taxing people who already exercise good judgment isn't going to change the attitudes of rogue litterbugs."

The bag tax is a statement that we – the public – cannot be trusted to do the right thing. As a conscientious citizen, I take strong exception to that.

I regret that we're even having this conversation, because the bag tax is a distraction from our critical priorities.

The deficit was one billion dollars last year. \$300 million this year. Unfunded pension liabilities are in the billions. This body imposed a slate of new nuisance taxes last year, and the bag tax would be yet another.

So while you are asking us to dig deeper and do more with less, your support for the bag tax would tell us that we cannot be trusted to do the right thing.

And this is a tax. The bill text itself uses the words "tax" or "taxes" thirty-five times.

My two oldest children attended second grade in portable trailers at an overcrowded Rosemary Hills. Our schools struggle for resources. We are even selling advertising space in our local parks because we cannot afford rest room facilities.

With respect, this is not about walking and chewing gum at the same time. It's about good intentions but bad policy.

The overwhelming majority of us are hardworking citizens who care for our environment and play by the rules. Yet each time we would be forced to pay this tax would be a reminder that we are not to be trusted to do the right thing.

I just want to feel good again about where we are headed. And for me, the bag tax is a big step in the wrong direction, and I ask you to do the right thing as well.



March 31, 2011

The Honorable Valerie Ervin, President
and Members of the Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 8-11, Excise Tax on Disposable Carryout Bags

Dear President Ervin and Members of the County Council:

The Progressive Bag Affiliates of the American Chemistry Council, a group representing the leading US plastic bag manufacturers, their raw material suppliers and recyclers, must respectfully **oppose Bill 8-11**, legislation that would mandate retailers impose a five-cent tax on plastic and paper carryout bags distributed to their customers for carrying their purchases. While we generally support efforts to reduce litter and to discourage the improper disposal of plastic bags, we must object to this measure for the following reasons:

- There are serious unintended consequences with this approach that should be considered.
- There are better alternatives that rely on a comprehensive reduce, reuse and recycle approach.

Many jurisdictions throughout this country have considered taxing plastic bags as a means of controlling litter associated with the improper disposal of this material and all, with the exception of the District of Columbia, have rejected this approach. When it comes to litter, we need workable solutions that are based on a comprehensive approach and avoid unintended consequences that could negatively impact residents and the environment. What we've found to be an effective option are programs that make it easier for people to recycle their bags, and that's what we've been working with communities throughout the country to establish.

Recycling Works – and is Growing:

- Plastic bag recycling is well established across the country, and is a growing national trend. An increasing number of states and cities including **California, Florida, Texas, New York, Delaware, Rhode Island, Virginia, Chicago, New York City, Tucson** – have enacted laws or implemented voluntary initiatives to establish at-store programs to collect plastic bags and product wraps for recycling as a practical and effective means to divert this material from the waste stream. And these efforts are showing results: **The recycling of bags and wraps has grown 31 percent since 2005 and now totals over 855 million pounds per year nationwide**, according to the latest national report. Today there are more locations that accept plastic bags for recycling than ever before. More than 12,000 retail locations have bag and wrap recycling bins and major retailers such as Wal-Mart, Target and Lowe's now offer bins at their stores nationwide. Plastic film recycling should be encouraged. The Illinois Bag Recycling Task Force reached a similar conclusion in their report to the state legislature in 2010 and rejected bans and taxes.

The Unintended Consequences of Bag Taxes:

From our extensive experience in dealing with this issue, we have found that you cannot ban or tax your way toward environmental stewardship and these policy approaches have unintended consequences that adversely affect not only consumers, but ultimately the environment.

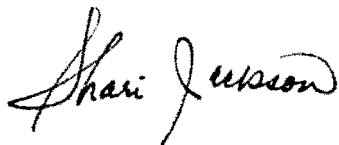
- **A bag tax would mean higher grocery bills for County residents.** Where shoppers are forced to pay a tax to get bags at checkout, the cost is real. A bag tax could inflict significant costs on families struggling to make ends meet in this depressed economy.

- **Taxing plastic bags could cost Maryland jobs.** There are more than 100 good-paying manufacturing jobs in the plastic bag industry provided right here in this state, not to mention other suppliers and vendors that would be put at risk if this legislation were approved. Furthermore, this legislation promotes the use of reusable bags, most of which are made in China, over US manufactured products. Also consider that bag taxes could destabilize supply for "green" businesses that want to use recycled material. Recycling works most efficiently when there is consistent stream of high quality raw material available for use. When less recycled material is available, it makes it harder for companies to find a steady source of recycled material for use in new products. This discourages them from using recycled material and would be strong blow to domestic manufacturers who need consistent, quality feedstock.
- **Taxing "free" bags simply punishes and adds another burden on working families.** Plastic bag reuse is already part of our culture since the vast majority of U.S. consumers - almost 90 percent – report they reuse them. Those free plastic bags from the stores get lots of second uses around the home – uses for which consumers would otherwise need to buy plastic bags to do the same job.
- **Plastic and paper products are discriminated against in this bill by the promotion of a product that may cause inadvertent effects.** This legislation would force retailers to charge their customers five-cents for each paper or plastic carryout bag to discourage their use, while promoting the use of reusable bags. Recent studies have shown cross contamination issues with some reusable bags and the need for consumer education to keep these bags sanitary (http://uanews.org/pdfs/GerbaWilliamsSinclair_BagContamination.pdf). In addition, recent news reports on these bags, most of which are imported from China, have revealed some contain excessive levels of lead, which raises questions about their lack of adherence to U.S. regulatory standards.

We believe that this **bag tax proposal is punitive, would have unintended environmental and economic impacts, and there is a better alternative approach available.** We urge the Council to consider a less punitive and more cooperative approach to this issue that rewards communities that work in partnership with retailers, recyclers, and other interested stakeholders to enhance a system that effectively and efficiently helps to recycle these products. Our industry is involved in many similar programs throughout the country that are showing good results, and we stand ready to support such an effort working with Montgomery County.

Thank you for the opportunity to provide these remarks. Should you have any questions or comments, please contact me at 202-249-6616 or via email at shari_jackson@americanchemistry.com.

Sincerely,



Shari M. Jackson
Director, Progressive Bag Affiliates

Testimony of William Kominers

Bill No. 8-11 -- Excise Tax on Disposable Carryout Bags

(Public Hearing: March 31, 2011)

Good evening President Ervin and Members of the Council. My name is Bill Kominers, testifying as an individual on Bill No. 8-11, the excise tax on disposable carryout bags. I am here tonight because this Bill seems to cry out for evaluation against the Law of Unintended Consequences. To me, the problem being solved is not clear. What product, carryout bag, or transaction is meant to be covered by this legislation? The proposed Bill seeks to reduce the presence of plastic bags in the waste system in a manner that is overly broad and detrimental to consumers as well as businesses. At present, the Bill is all stick, no carrot.

The Bill would require that each time "a retail establishment," any retail establishment, provides a bag to a customer, the tax is imposed. Therefore, the customer should carry a reusable bag to avoid that tax and avoid the waste of the carryout bag. "Retail Establishment" (Lines 22 - 25) essentially includes "any person" engaged in the retail sale of goods to any customer. The Bill seems to presume that disposable paper or plastic bags can be readily replaced by reusable bags. This is often true. When it comes to the routine trip to the grocery store, reusable bags are a staple in our family. However, not all trips are to the grocery store and not all products are the size of groceries. I have several examples.

1. Go to Bed Bath & Beyond to buy one or two pillows. Bring your own reusable bag. As you can see from this Bed Bath & Beyond plastic bag containing only one pillow at present, I'm not certain that there is a reusable bag that would fit these products. Maybe a bag is not needed, because I'm putting the pillows right into my car. But what if I actually took public transportation? Or had more items?

2. When someone goes to an art supply store to buy a sheet of mattboard or a sheet of foamcore (perhaps to prepare an exhibit to present to the County Council) they are often given a large plastic bag -- both to hold the product and to protect it from the weather. Mattboard and foamcore do not play well with rain. As you see from the small piece of mattboard I have with me, (only 20 inches by 30 inches), a large bag is still required. Boards used for exhibits are about twice this size. Again, no reusable bags that would seem to fit this product.

You may think that all artists have large leather portfolios in which to carry these materials so the lack of properly-sized reusable bags is not a problem. Perhaps. But

consumers of these products are often students, or parents of students, with much more limited frequency of purchase that does not justify a fancy portfolio.

3. Dry cleaners. I'm not certain whether the plastic the dry cleaners put over shirts, suits, dresses, sweaters, etc. qualifies as a "carryout bag". The plastic provided is not intended to "carry" purchased items. However, if you do not receive your dry cleaning on a hanger, but have it instead ironed and folded, you receive it in a paper bag, such as this one. I can only assume from the content of the Bill that this bag would be subject to the five cent tax. To avoid this cost, dry cleaned items would have to be carried in your arms to the back of a car. (This, of course, ignores the possibility of what one would do if travelling to the dry cleaners on public transit and how you would then carry your week's worth of dry cleaning, sans bag, on the public transportation.)

4. Packaging. Sometimes bags are used as packaging. Consider the lowly roofing nail at Strosnider's Hardware. This came from those little bins of loose nuts, bolts, washers, and the like. You pick out how many you need, put them in a small brown paper bag, and the number of items and the unit price is written on the outside for the cashier. These are generally very small items that are sold loose, so some type of packaging is needed once you make a selection. In addition, as these items are very small, so the store wants to avoid concealment. Using the bag as the price tag speeds the purchase transaction for the cashier. Now in this instance, the roofing nail costs five cents. If the five cent bag tax were charged, that would double the price of the item itself. This cannot be your intention.

In short, there are not reusable bags available that are suitable for all types of purchases. Yet the Bill assumes there are, and penalizes retailers and customers for large items for which reusable bags are not available nor practical. The consumer does not have a choice in avoiding the tax, because there are no substitute, reusable carryout bag for many products -- or for when you are carrying a large number of products. The Bill also penalizes those products for whom placement in a bag is a part of the packaging or the retail sale operation.

So much for examples. Some clarifications in the Bill are also needed.

1. There is an exemption (Lines 14 - 15) for "a paper bag that a restaurant gives a customer to take prepared food or drink from the restaurant." The legislation is unclear as to whether this covers all foods prepared on the premises for take-out, or only those partially consumed items that are taken home in a "doggy bag." For example, here is a bag Quizno's gave me with my sandwich for lunch. Would this bag be subject to the tax or not? If the tax applies, the only way that I could avoid tax would be to carry the sandwich in my hands or bring a reusable bag for it (and remember that evening to clean out the pieces of lettuce that might have fallen out and lodged in the bag). Likewise, this bag from Chipotle. Do you intend a different travel method for burritos?

2. Advertising. Often, bags are used by retailers for advertising; they want you to walk around the Mall carrying their bag. A reusable bag limits their advertising. Even worse, what if you bring a different store's bag. Imagine Nordstrom's embarrassment if you bring in a Penney's bag with you and use it to carry your Nordstrom's merchandise! So, can a store subsidize the tax in order to give bags to its customers, and continue to achieve the advertising goal?

I have not even had time to discuss the possible transference of bacteria question for reusable bags -- from the bag carrying apples to one that is used to carry clothing or other goods. Nor have we considered the potential risks from use of reusable bags to carry cleaning supplies or other potentially toxic materials from the grocery store one day and foodstuffs the next.

I feel responsible to give you an alternative.

Recycling as a solution in lieu of tax

How about using a carrot, rather than a stick? Paper and plastic bags are not automatically "disposable." They are each recyclable, not just through multiple uses by the consumer, but also by physical recycling through retailers. If the goal is to avoid placing bags into the waste system, I would suggest that instead of this tax, you propose a deposit and refund system for return of carryout bags (like soda bottles used to have). This would encourage people to return bags for recycling or reuse in order to get the deposit refunded. In addition, this could have the salutary effect of causing people to pick up loose bags along the roads or elsewhere and turn them in for the deposit. This would not only clean up the Bay but also clean up the streets, parks, and playgrounds.

Conclusion

If the goal is to compel use of reusable bags to take home purchases, to be fair, the Council must first evaluate whether that is possible in all cases. Particularly, the question of: are there reusable bags that will fulfill this purpose for all the products for which bags might be needed? In summary, I believe that the Council should seriously narrow the scope of this Bill to avoid the vast range of unintended consequences that can readily result from the Bill as written. Assuming that this Bill is a means to an end, you should craft a Bill that reaches the goal intended, rather than so many unintended or alternative results.

Thank you for your consideration.