



**FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.**

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**Testimony by  
the Food Industry Alliance of New York State, Inc.  
Regarding  
Preconsidered Int. No. Codifying a Paper Carryout Bag Reduction Fee**

Thank you for the opportunity to submit testimony regarding Preconsidered Int. No. codifying a paper carryout bag reduction fee (Proposed Local Law). My name is Jay Peltz and I am the General Counsel and Senior Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout New York. Our members include chain and independent food retailers that account for a significant share of the city’s retail food market and the grocery wholesalers that supply them.

Neighborhood grocers have never faced a more difficult operating environment. Operating expenses are increasing as rents soar, health insurance premiums rise and the minimum wage has increased to \$15.00 an hour. NYC businesses are attempting to manage the costs and burdens of recently enacted city and state benefit mandates, including paid sick, safe and family leave as well as measures requiring sexual harassment education and restricting employee scheduling. Accordingly, city and state regulatory burdens are squeezing neighborhood grocers while nontraditional retailers (that are largely nonunion operators) such as internet sellers, warehouse clubs, natural/organics retailers and dollar stores are taking market share from neighborhood grocers.

These circumstances are making it increasingly difficult for neighborhood grocers to net even a penny on the dollar. Traditional grocers have shut their doors while food deserts are present throughout the city. Accordingly, the city should focus on reducing regulatory uncertainty for the neighborhood grocers that have invested heavily in the boroughs, rather than considering legislation that will exacerbate that uncertainty.

Section 27-2805(a) of the Environmental Conservation Law (ECL), enacted as part of the Bag Waste Reduction law (Bag Waste Reduction Law), provides that “Notwithstanding any other provision of law to the contrary, any city...acting through its legislative body, is hereby authorized and empowered to adopt...local laws...imposing a paper carryout bag reduction fee within the territorial limits of such city...to take effect on or after March first, two thousand twenty.” Such local laws can be adopted after March 1, 2020.

However, Section 27-2805(b) of the ECL states that “Such paper carryout bag reduction fee...shall be imposed at a rate of five cents on each paper carryout bag...; provided, however, that such paper carryout bag reduction fee shall not be imposed on paper carryout bags that are subject to a fee on the provision of such paper carryout bag pursuant to a local law...*that was adopted prior to the effective*

*date of this section* (emphasis added).” Our understanding is that the Proposed Local Law is intended to be adopted on or about June 1, 2019.

Assuming the Proposed Local Law is adopted on or about June 1, 2019, it would be a local law “...adopted prior to the effective date of...” Section 27-2805, which is March 1, 2020. Accordingly, the Proposed Local Law would not be implementing the fee purportedly authorized under Section 27-2805(a), which requires that fee proceeds be remitted to the state. Rather, it would implement a fee authorized under Section 27-2805(b). The proceeds of such fees, however, must be retained by retailers, since the city has no authority that we are aware of to require sellers to remit such fees to the state. Does the city agree?

Moreover, Section 27-2809 of the ECL provides that “Jurisdiction *in all matters* pertaining to plastic carryout bags *is vested exclusively* in the state (emphasis added).” The paper carryout bag reduction fee incorporated into the Proposed Local Law is clearly a matter “...pertaining to...” plastic carryout bags, since it was proposed under authority purportedly granted under the Bag Waste Reduction Law, whose main feature is to prohibit the distribution of plastic carryout bags. The whole point of the Proposed Local Law is to allow the Bag Waste Reduction Law to achieve its goals. Accordingly, local laws containing paper bag carryout fees adopted prior to March 1, 2020, including the Proposed Local Law, seem to be preempted.

The foregoing analysis reflects the confusion that environmental groups, localities and businesses are experiencing regarding the Bag Waste Reduction Law. Other major questions under the law include whether heavy duty reusable bags made of durable plastic are banned and whether retailers can charge, and retain, a fee on top of the five-cent fee discussed under Section 27-2805(a) of the ECL. Unfortunately, the Bag Waste Reduction Law raises more questions than it solves.

Finally, this public hearing is being held on two business days’ notice. Because both Passover and Easter are next week, FIA does not have anyone available to discuss the Proposed Local Law at the public hearing, nor will we be able to fully review the legislation with our members prior to the public hearing.

Considering the foregoing, we respectfully request that the public hearing on the Proposed Local Law be cancelled and that the bill sponsors discuss a collaborative path forward with FIA and its members.

Thank you for your attention to our concerns.

Respectfully submitted,

**Food Industry Alliance of New York State, Inc.**  
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