

A BILL 1

18-150 2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 3

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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 establish a nonlapsing fund known as the Anacostia River Cleanup and Protection Fund in which the fees are deposited, to authorize use of the fees, and to create a voluntary income tax check-off to benefit the Fund. 5
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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this 12
act may be cited as the "Anacostia River Clean Up and Protection Act of 2009". 13

Sec. 2. Definitions. 14

For the purposes of this act, the term: 15

(1) "Disposable carryout bag" means a bag of any material, commonly plastic or 16
kraft paper, which is provided to a consumer at the point of sale to carry purchases. The term 17
"disposable carryout bag" shall not include: 18

(A) Bags used by consumers inside stores to: 19

(i) Package bulk items such as fruit, vegetables, nuts, grains, 20
candy, or small hardware items; 21

(ii) Contain or wrap frozen foods, meat or fish, whether 22
prepackaged or not; 23

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- (iii) Contain or wrap flowers or potted plants, or other items 1
where dampness may be a problem; and 2
 - (iv) Contain unwrapped prepared foods or bakery goods; 3
 - (B) Bags provided by pharmacists to contain prescription drugs; 4
 - (C) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or 5
bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard 6
waste bags; 7
 - (D) Paper carryout bags that restaurants, as defined in D.C. Official Code 8
§ 47-2827(e)(2), provide to customers to take food away from the retail establishment; or 9
 - (E) Reusable carryout bags. 10
- (2) “Retail establishment” means any licensee under a Public Health: Food 11
Establishment Retail endorsement to a basic business license under Chapter 28 of Title 47 of the 12
D.C. Official Code or under an off-premises retailer’s license, class A or B, pursuant to D.C. 13
Official Code § 25-112. 14
- (3) “Reusable carryout bag” means a bag with handles that is specifically 15
designed and manufactured for multiple reuse and is made of cloth, fiber, other machine 16
washable fabric, or durable plastic that is at least 2.25 millimeters thick. 17
- Sec. 3. Requirements for disposable carryout bags made available to customers by retail 18
establishments. 19

- (a) Disposable carryout bags made of plastic that cannot be recycled shall not be sold or distributed, retail or wholesale, in the District. 1
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 - (b) Disposable carryout bags made of paper shall: 3
 - (1) Be 100% recyclable; 4
 - (2) Contain a minimum of 40% post-consumer recycled content; and 5
 - (3) Display the phrase “Please Recycle This Bag”, or a substantially similar phrase, in a highly visible manner on the bag exterior. 6
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 - (c) Disposable carryout bags made of plastic shall: 8
 - (1) Be 100% recyclable; 9
 - (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 10
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 - (3) Display the phrase “Please Recycle This Bag”, or a substantially similar phrase, in a highly visible manner on the bag exterior. 13
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 - (d) Violation of requirements set forth in section 3 shall subject the establishment to the penalties set forth in section 5. 15
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- Sec. 4. Establishment of fee. 17
- (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. 18
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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; however, an establishment that chooses to offer a carryout bag credit program to its customers, as outlined in section 4(b)(1)(B), 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 pursuant to this section 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 D.C. Official Code. 1

(D) The fees retained by the retail establishment shall be excluded from 2
the definition of retail sale under D.C. Official Code § 47-2001(n)(2) and from the definition of 3
gross receipts under D.C. Official Code § 47-2761(5). 4

(E) The fees to be remitted to the District under subsection (b)(2) of this 5
section shall be added to other tax payments in determining whether the electronic payment 6
requirement under D.C. Official Code § 47-4402(c) applies. 7

(2) The remaining amount of each fee collected shall be paid to the Office of Tax 8
and Revenue and shall be deposited in the Anacostia River Cleanup and Protection Fund 9
established by section 6. 10

(c) The Office of Tax and Revenue shall develop rules for frequency and method for 11
reporting and transmitting the fees, as described in subsection 4(a), to the District. 12

(d) Except to the extent of any inconsistency with this act, the same provisions to Title 13
47 of the D.C. Official Code that are applicable to the gross sales tax shall govern the 14
administration, collection, and enforcement of the fee under subsection (a) of this section. 15

Sec. 5. Enforcement and penalties for violation. 16

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure 17
Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue 18
rules to implement the provisions of this act within 90 days of the effective date of this act. 19

(b) If the Mayor determines that a violation has occurred, the retail establishment shall 20

be liable for the fees under section 4(a) and: 1

(1) Upon the first violation, written warning notice that a violation has occurred 2
shall be issued to the retail establishment. No penalty shall be imposed for the 1st violation. 3

(2) Upon subsequent violations, the Mayor shall impose a penalty on the retail 4
establishment. The penalty shall not exceed: 5

(A) \$100 for the 1st violation after the written warning in a calendar year; 6
(B) \$200 for the 2nd violation in the same calendar year; or 7
(C) \$500 for the 3rd and each subsequent violation in the same calendar 8
year. 9

(3) No more than one penalty shall be imposed upon a retail establishment within 10
a 7-day period. 11

(c) If payment of any amounts due under this section is not received by or before the due 12
date, a penalty shall be added as the Mayor provides by rule. 13

(d) Revenues collected through citations for violation of this act shall be used only for 14
enforcement costs, including hiring inspectors and other staff, and administrative costs 15
associated with enforcement of this act. 16

Sec. 6. Establishment of the Anacostia River Clean Up and Protection Fund. 17

(a) There is established as a nonlapsing fund, the Anacostia River Clean Up and 18
Protection Fund (“Fund”). The fees established by section 4 for disposable carryout bags and 19
transmitted to the Office of Tax and Revenue shall be deposited in the Fund. The Fund shall be 20

used solely for the purposes set forth in subsection (b) of this section and shall be administered 1
by the Office of the Director of the District Department of the Environment. 2

(b) The Fund shall be used solely for the purposes of cleaning and protecting the 3
Anacostia River and other impaired waterways. Funds ~~may~~ shall be used for the following 4
projects ~~including~~ in the following order of priority: 5

(1) A public education campaign to educate residents, businesses, and tourists 6
about the impact of trash on the District's environmental health; 7

(2) Providing reusable carryout bags to District residents, with priority 8
distribution to seniors and low-income residents; 9

(3) Purchasing and installing equipment such as storm drain screens and trash 10
traps, designed to minimize trash pollution that enters waterways through storm drains, with 11
priority given to storm drains surrounding the significantly impaired tributaries identified by 12
DDOE; 13

~~(3)~~(4) Creating youth-oriented water resource and water pollution educational 14
campaigns for students at the District public and charter schools; 15

~~(4)~~(5) Monitoring and recording pollution indices; 16

~~(5)~~(6) Preserving or enhancing water quality and fishery or wildlife habitat; 17

~~(6)~~(7) Promoting conservation programs, including programs for wildlife and 18
endangered species; 19

~~(7)~~(8) Purchasing and installing equipment designed to minimize trash pollution, 20

including ~~trash traps~~, recycling containers, and covered trash receptacles; 1

~~(8)~~(9) Restoring and enhancing wetlands and green infrastructure to protect the 2
health of the watershed and restore the aquatic and land resources of its watershed; 3

~~(9)~~(10) Funding community cleanup events and other activities that reduce trash, 4
such as increased litter collection; 5

~~(10)~~(11) Funding a circuit rider program with neighboring jurisdictions to focus 6
river and tributary clean up efforts upstream; 7

~~(11)~~(12) Supporting vocational and job training experiences in environmental 8
and sustainable professions that enhance the health of the watershed; 9

~~(12)~~(13) Maintaining a public web site that educates District residents on the 10
progress of clean up efforts; and 11

~~(13)~~(14) Paying for the administration of this program. 12

(c) The Fund shall not be used to supplant funds appropriated as part of an approved 13
annual budget for Anacostia River cleaning activities. 14

(d)(1) All funds deposited into the Fund, and any interest earned on those funds, shall 15
not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the 16
end of the fiscal year, or at any other time, but shall be continually available for the uses and 17
purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject 18
to authorization from Congress. 19

Sec. 7. Applicability. 20

- (a) Sections 3 through 6 of this act shall apply as of January 1, 2010. 1
 - (b) Beginning on or before October 1, 2009, the District Department of the Environment shall: 2
 - (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 3
 - (2) Conduct an outreach campaign that includes: 4
 - (A) A public-private partnership to provide reusable carryout bags to District residents; and 5
 - (B) Working with service providers that assist seniors and low-income residents to distribute information and multiple reusable carryout bags to low-income households. 6
- Sec. 8. Establishment of Anacostia River Commemorative License Plates. 7
- (a) The Mayor shall issue reflectorized registration plates of a design to enhance public awareness of the District of Columbia’s efforts to restore and protect the Anacostia River and these plates may be called Anacostia River Commemorative License Plates. These plates shall retain and display the “TAXATION WITHOUT REPRESENTATION” slogan of the current District of Columbia vehicle tags.” 8
 - (b) In addition to the annual registration fee otherwise required by the District of 9

Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat 680; D.C. Official Code §50-1501.03), a one time fee of \$25 shall be charged each time new registration plates are issued under the provisions of this Section. There shall also be a \$20 renewal fee for registration plates issued under this section, which shall be charged biennially.

(c) Of the proceeds collected from the one-time \$25 fee and the biennial \$20 renewal fee charged under this section, the Mayor shall recover the cost of producing and issuing the commemorative plates.

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

(e) The Mayor shall execute the requirements of this section within 180 days of the date of enactment. If an extension is necessary, the Mayor must notify the Council prior to the execution date.

Sec. 9. Conforming amendments.

Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat 680; D.C. Official Code §50-801 codified in various sections) is amended as follows:

(1) Section 3(d) (D.C. Official Code §50-1501.03(d)) is amended to read as follows:

“(d) The proceeds from fees payable under this chapter shall be paid into the General Fund of the District of Columbia established in the Revenue Funds Availability Act of 1975, effective January 22, 1976 (D.C. Law 1-42; 22 DCR 6318), except that fees collected under subsection (b-1) of this section shall be paid into the out Out-of-State Vehicle Registration Fund

as established by section 3a. In addition, the one time \$25 fees and the biennial \$20 renewal fees
collected for the Anacostia River Commemorative License Plate, shall be paid into the Anacostia
River Clean Up and Protection Fund, established in the Anacostia River Clean Up and Protection
Act of 2009.”.

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

Sec. 810. 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. The contribution shall reduce any refund
owed to the individual taxpayer or increase the tax owed by the individual taxpayer on the
taxpayer's tax return. The funds generated from the tax check-off shall be earmarked for 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 transferred to the Fund. 1

(c) The Mayor shall include, with the individual tax return package, a description of the 2
purposes for which the Fund was established and projects for which the Fund may be used. 3

Sec. ~~9~~11. Fiscal impact statement. 4

The Council adopts the fiscal impact statement in the committee report as the fiscal 5
impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, 6
approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c))(3)). 7

Sec. ~~10~~12. Effective date. 8

This act shall take effect following approval by the Mayor (or in the event of veto by the 9
Mayor, action by the Council to override the veto), a 30-day period of Congressional review as 10
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 11
24, 1973 (87 Stat.813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 12
Columbia Register. 13