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2 Councilmember Vincent C. Gray

Councilmember Tommy Wells

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6 Councilmember Mary M. Cheh

Councilmember Kwame R. Brown

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10 Councilmember Marion Barry

Councilmember Yvette Alexander

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14 Councilmember Harry Thomas, Jr

Councilmember Michael A. Brown

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18 Councilmember David A. Catania

Councilmember Jack Evans

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22 Councilmember Phil Mendelson

Councilmember Muriel Bowser

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30 A BILL

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34 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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39 Councilmember Tommy Wells, Vincent C. Gray, Mary M. Cheh, Kwame R. Brown, Marion
40 Barry, Yvette Alexander, Harry Thomas, Jr., Michael A. Brown, David A. Catania, Jack
41 Evans, Phil Mendelson, and Muriel Bowser introduced the following bill, which was
42 referred to the Committee on _____.

43
44 To protect the aquatic and environmental assets of the District of Columbia; to ban the use of
45 disposable non-recyclable plastic carryout bags; to establish a fee on all other disposable
46 carryout bags provided by grocery stores, drug stores, liquor stores, restaurants, and food

1 vendors; to give the Mayor the authority to implement rules and procedures to collect the
2 fee; to establish a non-lapsing recurring Anacostia River Cleanup and Protection Fund.
3

4 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
5 act may be cited as the "Anacostia River Clean Up and Protection Act of 2009".
6

7 Sec. 2. Findings.

8 The Council of District of Columbia finds that:

9 (1) The widespread provision of carryout bags to consumers creates significant problems
10 relating to their disposal and effect on the environment.

11 (2) Plastic carryout bags are the largest single source of trash in the Anacostia River
12 tributaries and of the three largest sources in the entire river.

13 (3) Plastic carryout bags clog sewer systems, and pose a risk to marine animals that ingest
14 them or become entangled in them along the River.

15 (4) The Anacostia River soon will be subject to an Environmental Protection Agency
16 mandated Total Maximum Daily Load (TDML), which sets the level of allowable pollution;
17 exceeding this figure will result in severe fines for the District.

18 (5) There exists a need to discourage the use of single-use, disposable plastic and paper bags
19 and encourage the use of reusable bags by consumers and retailers in order to minimize the impact of
20 disposable bags on the Anacostia River, on the health and environment of the District and its
21 residents, and on the District's fiscal welfare.

22 (6) Other jurisdictions worldwide have seen a dramatic decrease in disposable bag use when
23 small fees have been implemented that encourage consumers to choose reusable shopping bags.
24

25 Sec. 3. Definitions.

26 (a) "Disposable carryout bag" means a bag of any material, commonly plastic or kraft
27 paper, which is provided to a consumer at the point of sale to carry purchases. "Disposable
28 carryout bag" does not include: bags used by consumers inside stores to package bulk items such
29 as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; bags
30 used to contain or wrap frozen foods, meat or fish, whether prepackaged or not, flowers or potted
31 plants, or other items where dampness may be a problem; bags used to protect prepared foods or
32 bakery goods; bags provided by pharmacists to contain prescription drugs; or newspaper bags,
33 door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags
34 intended for use as garbage, pet waste, or yard waste bags.

1 (b) "Recyclable paper carryout bag" means a paper bag that meets all of the following
2 requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and contains a
3 minimum of 40% post-consumer recycled content, and (3) displays the word "Recyclable" in a
4 highly visible manner on the outside.

5 (c) "Recyclable plastic carryout bag" means a plastic bag that (1) is made of high-density
6 polyethylene film (HDPE) marked with the SPI resin identification code 2 or low-density
7 polyethylene film (LDPE) marked with the SPI resin identification code 4, and (2) displays the
8 words "Please Recycle This Bag," or substantially similar language, in a highly visible manner
9 on the outside.

10 (d) "Retail Establishment" means any licensee under a Department of Consumer and
11 Regulatory Affairs Basic Business License category Public Health: Food Establishment Retail
12 (D.C. Official Code Sec. § 47-2851.03(10)(J)) license or under an Alcoholic Beverage
13 Regulation Administration off-premises retailer's license, class A or B.

14 (e) "Reusable carryout bag" means a bag with handles that is specifically designed and
15 manufactured for multiple reuse and is either (1) made of cloth, fiber or other machine washable
16 fabric, and/or (2) made of durable plastic that is at least 2.25 millimeters thick.

17
18 Sec. 4. Ban use of disposable non-recyclable plastic carryout bags.

19 (a) Disposable non-recyclable plastic bags shall not be sold or distributed, retail or
20 wholesale, in the District of Columbia.

21 (b) All Retail Establishments shall provide only the following as carryout bags to
22 consumers:

- 23 (1) recyclable paper carryout bags;
- 24 (2) recyclable plastic carryout bags; and
- 25 (3) reusable bags

26 (c) Nothing in this section shall preclude stores from making the allowable carryout bags
27 in section 4 (b)(3) available through sale to consumers.

28 (d) Violation of requirements set forth in section 4 shall subject the establishment to the
29 penalties set forth in section 6.

30
31 Sec. 5. Establishment of fee.

1 (a) A fee of \$.05 per recyclable paper and plastic carryout bag is hereby established for
2 consumers making purchases from Retail Establishments.

3 (1) Fees must be paid by the consumer at the time of purchase.

4 (2) Retail Establishments may not pay the fee on behalf of consumers.

5 (3) All Retail Establishments shall indicate on the consumer transaction receipt
6 the number of disposable carryout bags provided and the total amount of fee charged.

7 (4) Fees shall be collected by the Office of Tax and Revenue (OTR) and allocated
8 as defined in subsection 5(b).

9 (b) The \$.05 fee per recyclable paper and plastic carryout bag shall be distributed as
10 follows:

11 (1) To the Retail Establishment:

12 (A) From each \$.05 fee collected, \$.01 will remain with the establishment;
13 however, an establishment that chooses to offer a carryout bag credit program to
14 its customers, as outlined in subsection 5(b)(1)(B), will retain an additional \$.01
15 from each fee collected, for a total of \$.02 per fee collected.

16 (B) For an establishment to retain an additional \$.01 from each fee
17 collected, its carryout bag credit program must:

18 (i) credit the consumer a minimum of \$.05 for each carryout bag
19 provided by the consumer for packaging their purchases, regardless of
20 whether that bag is paper, plastic, or reusable;

21 (ii) be prominently advertised at each checkout register; and

22 (iii) reflect the total credit amount on the consumer transaction
23 receipt.

24 (C) The fees retained by the establishment pursuant to this section shall
25 not be classified as revenue and shall be tax exempt.

26 (2) The remaining amount from each fee collected shall be deposited in the
27 Anacostia River Cleanup and Protection Fund as described in section 7.

28 (c) OTR shall develop rules for frequency and method for reporting and transmitting the
29 fees, as described in subsection 5(a), to the District.

30
31 Sec. 6. Enforcement and Penalties for Violation.

1 (a) The Mayor shall promulgate rules necessary to enforce the requirements of this act
2 within 90 days of the effective date of this Act.

3 (b) If the Mayor determines that a violation has occurred

4 (1) First violation. A written warning notice shall be issued to the Retail
5 Establishment that a violation has occurred. No fine shall be issued for the first violation.

6 (2) Subsequent violations. If after the warning notice the Retail Establishment
7 continues to violate the requirements of this Act, the Mayor shall issue a fine to the Retail
8 Establishment. The fines may not exceed:

9 (A) \$100 for the first violation in a calendar year;

10 (B) \$200 for the second violation in the same calendar year; or

11 (C) \$500 for each additional violation in the same calendar year.

12 (3) No more than one fine shall be issued to a Retail Establishment within a 7-day
13 period.

14 (c) If payment of any amounts due under this section is not received by or before the due
15 date, a penalty shall be added.

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

19
20 **Sec. 7. Establishment of the Anacostia River Clean Up and Protection Fund**

21 (a) There is established as a non-lapsing recurring fund, titled the Anacostia River Clean
22 Up and Protection Fund (“Fund”), where the fees generated by the purchase of disposable paper
23 and plastic carryout bags from Retail Establishments shall be deposited. The Fund shall be used
24 solely for the purposes set forth in subsection (b) and be administered by the Office of the
25 Director of the District Department of the Environment (DDOE).

26 (b) The Fund shall be used solely for the purposes of cleaning and protecting the
27 Anacostia River. Funds may be used for projects including, but not limited to:

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

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

- 1 (3) Creating youth-oriented water resource and water pollution educational
2 campaigns for students at the District of Columbia public and charter schools;
- 3 (4) Monitoring and recording pollution indices for the Anacostia River;
- 4 (5) Preserving or enhancing water quality and fishery or wildlife habitat in the
5 Anacostia River;
- 6 (6) Promoting conservation programs for the Anacostia River, including programs
7 for wildlife and endangered species;
- 8 (7) Purchasing and installing equipment designed to minimize trash pollution
9 reaching the Anacostia watershed, including trash traps, recycling containers, and covered trash
10 receptacles;
- 11 (8) Restoring and enhancing wetlands and green infrastructure to protect the
12 health of the Anacostia River and restore the aquatic and land resources of its watershed;
- 13 (9) Funding community cleanup events and other activities that reduce trash, such
14 as increased litter collection;
- 15 (10) Funding a Circuit Rider Program with neighboring jurisdictions to focus
16 river and tributary clean up efforts upstream;
- 17 (11) Supporting vocational and job training experiences in environmental and
18 sustainable professions that enhance the health of the Anacostia River;
- 19 (12) Maintaining a public web site that educates District residents on the progress
20 of Anacostia clean up efforts; and
- 21 (13) Paying for the administration of this program.

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

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

29 (2) Any funds that are transferred through intra-District transfers and are not
30 expended in a fiscal year shall revert to the Fund.

31

1 Sec. 8. Applicability.

2 (a) The requirements of this act shall become operative 6 months from the effective
3 date.

4 (b) Beginning at least 90 days before the effective date of the fee, DDOE shall:

5 (1) Conduct an intensive public information campaign, aimed at educating the
6 public on the importance of reducing the number of disposable bags entering the waste
7 stream and the impact of disposable bags on the rivers, tributaries, and environmental
8 health of the District;

9 (2) Conduct an outreach campaign that includes:

10 (A) A public-private partnership to provide reusable carryout bags to
11 District residents;

12 (B) Working with service providers that assist seniors and low-income
13 residents to distribute information and multiple reusable bags to low-income
14 households.

15
16 Sec. 9. Effective Date.

17 This act shall take effect following approval by the Mayor (or in the event of veto by the
18 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
19 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
20 24, 1973 (87 Stat.813; D.C. Official Code Sec. § 1-206.02(c)(1)), and publication in the District
21 of Columbia Register.

22
23 Sec. 10. Fiscal impact statement.

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