

LEGISLATIVE & RULES COMMITTEE

AGENDA

JANUARY 31, 2019

Committee Members: Supervisors Strough, Leggett, Braymer, Wild, McDevitt, Diamond, Dickinson, Geraghty, Magowan, Sokol and Driscoll

- I. Committee meeting called to order by Chairman
- II. Motion to approve the minutes of the prior meeting - *August 13, 2018*
- III. Action Agenda/New Business Items:
 - 1) Amendments to proposed local law regarding plastic bag use in Warren County.
 - 2) Amendments to proposed local law regarding Municipal Opioid Cost Recovery and Public Nuisance.
- IV. Discussion Items:

None.
- V. Referrals/Pending Items:

None.
- VI. Privilege of the Floor to discuss any additional items to come before the Committee
- VII. Motion to adjourn

Attachments:

- 1) Amendments to proposed local law regarding plastic bag use in Warren County as provided by Supervisor Braymer.
- 2) Amendments to proposed local law regarding Municipal Opioid Cost Recovery and Public Nuisance as provided by the County Attorney.

Revised ~~December 4~~ April 25, 2018

Proposal for an Amendment to the Warren County Law

Promoting the Use of Re-usable Bags

“Bring Your Own Bag Law”

A Proposal for an amendment to the Local Laws of Warren County to promote the use of re-usable bags and reduce the use of single-use carryout bags by prohibiting the distribution of plastic bags ~~by grocery stores.~~

Part I: Legislative Intent

- (1) Warren County has a responsibility to protect the natural environment and the health of its citizens and visitors; and
- (2) The use of Single-use Carryout Bags (as defined in this proposal) has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; data released by the United States Environmental Protection Agency shows that between 500 billion and one trillion plastic bags are consumed worldwide each year; and
- (3) Single-use Carryout Bags represent an unnecessary use of non-renewable resources. Plastic shopping bags are made from polyethylene, a thermoplastic made from oil. Accordingly, reducing the use of plastic bags will decrease our dependence on fossil fuels. Re-usable Bags (as defined in this proposal) represent a sustainable alternative to single-use bags because they consume less resources overall and produce less waste; and
- (4) Plastic bags are the least desirable type of all single-use bags because they consume non-renewable fossil fuels, never fully degrade, and harm wildlife: birds can become entangled in the bags and different species of sea life can die from ingesting plastic bags which they mistake for food; and
- (5) Despite recycling and voluntary solutions to control pollution from Single-use Carryout Bags, these bags end up littering our environment, impeding waterways, contaminating water and soil, clogging sewers, overwhelming landfills, and endangering wildlife; and
- (6) From an environmental and economic perspective, re-usable bags are considered to be a better alternative to Single-use Carryout Bags because re-usable bags reduce waste and litter, protect wildlife and conserve resources. They are readily available and affordable for the customer; and
- (7) Studies document, and participating municipalities report, that prohibiting the distribution of Single-use Carryout Bags will dramatically reduce the use of those types of bags; and
- (8) Warren County aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife; all of which increase the quality of life for the County’s residents and tourists; and
- (9) Warren County taxpayers must bear costs associated with the effects of Single-use Carryout Bags on the solid waste stream, drainage, litter, and wildlife. It is in the best interests of the health, safety and welfare of citizens and visitors of Warren County to reduce the cost to the County of solid waste disposal, and to protect our environment and our natural resources; and

(10) Therefore, Warren County concludes that prohibiting the distribution of Single-use Carryout Bags by ~~grocery stores~~ will promote the use of Re-usable bags, and will begin to reduce the negative impacts that result from the unrestricted distribution of Single-use Carryout Bags.

Part II: Definitions.

As used in this Local Law the following terms have the following meanings:

~~Covered Store means Grocery Stores, and food service establishments located within grocery stores, that provide carryout bags to customers in which to place purchased items. This term does not include food service establishments located outside of Grocery Stores.~~

~~Food Service Establishment means a place where prepared food is provided for individual portion service directly to a consumer, whether consumption occurs on or off the premises.~~

~~Grocery Store means a retail establishment where produce, meats, or other food items are regularly and customarily sold for consumption off the premises.~~

Re-usable Bag means a bag that is specifically designed and manufactured for multiple reuse, and is either:

- (a) made of cloth or other machine-washable material, but not film plastic;
- (b) made of paper that ~~contains no old growth fiber,~~ is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; ~~or~~
- (c) ~~made of durable plastic that is at least 2.25 mils thick and that has handles [deleted in 12/4/18 version]. Reusable carryout bags provided to customers pursuant to this article shall be conspicuously labeled as reusable.~~

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Single-use Carryout Bag means a plastic bag other than a Re-usable bag, including those advertised as compostable, biodegradable, photodegradable or similar, provided by a ~~Covered Store~~ at the check-out stand, cash register, point of sale or other point of departure for the purpose of transporting merchandise out of the establishment. The term Single-use Carryout Bag does not include:

- 1. Re-usable Bags;
- 2. Plastic bags used solely to contain or wrap meat, fish or poultry;
- 3. Plastic bags used by a customer solely to package bulk items, such as fruits, vegetables, nuts, grains, candy, baked goods, and other non-prepackaged food items;
- 4. Plastic bags used solely to contain food sliced to order;
- 5. Plastic bags sold in bulk and plastic bags prepackaged for sale to a customer including, but not limited to, a trash bag and a food storage bag;
- 6. Plastic garment bags;
- 1. ~~Plastic bags provided by a restaurant, tavern or similar establishment to carry out or deliver food [deleted in 11/20/18 version];~~
- 2. ~~Produce Bags that are used to carry bulk items such as produce, fruit, meats, poultry, fish, dairy, dry goods or other non-prepackaged food items to the point of sale from within a Covered Store.~~
- 3. ~~Product Bags provided by pharmacists that are used to carry prescription medications to the point of sale within a Covered Store.~~
- 4. ~~Bags brought to the store by the consumer for reuse including plastic and paper bags the consumer may have obtained previously.~~

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Part III: Prohibition of Single-use Carryout Bags

- (1) ~~Beginning January first, two thousand and twenty, the provision of plastic Single-use Carryout Bags at any point of sale to customers is prohibited. A Covered Store shall not provide to customers any Single-use Carryout Bag(s) to carry purchased goods from such store.~~
- (2) No ~~Covered Store~~store shall charge a fee for, or prevent a customer from using, any bag brought by the customer to such store to carry purchased goods from such store.
- (3) Nothing in this section shall preclude a ~~Covered Store~~store from making Re-usable Bags available to customers for a fee or for free.

Part IV: Violations and enforcement

- (1) ~~The Warren County Director of the Weights and Measures Department Chair or his/her designee(s) shall have the primary responsibility for enforcement of this Local Law. If the Director of the Chair or his/her designee(s)Weights and Measures Department determines that a violation has occurred, he/she shall issue a written warning notice to the Covered Storestore that a violation has occurred and that the violation must be remedied within two weeks. Failure of the store to remedy the violation within said two week period shall constitute a violation that is subject to a civil fine of \$500.00. with Each subsequent separate violations occurring every day thereafter until the violation is remedied. It shall not be necessary for the Director of the Weights and Measures Department to issue a written notice for each subsequent day, after the two-week period has elapsed, to constitute a subsequent violation. occurrence of a violation shall be subject to a civil fine of \$500.00 for each such violation.~~
- (2) Within 30 days of receipt of a written notice from the Warren County Director of the Weights and Measures Department, the store may appeal to the Warren County Board of Supervisors for additional time (beyond the initial two weeks) to remedy the violation.
 - a. Such appeals must be in writing and must be submitted to the Weights and Measures Department.
 - b. In evaluating appeals, the Board of Supervisors may consider whatever information it deems relevant, including any evidence or information submitted by the appellant and any information obtained from the Weights and Measures Department. In the event that additional information is needed, the Board of Supervisors may direct the appellant to provide said information.
 - c. The Board of Supervisors will take into consideration all matters it deems relevant, including the quantity of prohibited bags in the store's inventory, the store's ability to sell or re-purpose the prohibited bags, the circumstances concerning the store's appeal, and the hardship to the store in the event that no additional time is granted.
- (3) For stores that possess, as of the effective date of this Local Law (July 1, 2019), an inventory of custom Single-use Carryout Bags that are pre-printed with the store's name and/or logo, the enforcement of this Local Law may be delayed until January 1, 2021. In order to qualify for the

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delayed enforcement of this Local Law, a store must notify the Warren County Director of Weights and Measures on or before December 31, 2019 of its request for delayed enforcement. Said request shall include the name, address, and telephone number for the store, a photograph showing the printing on the Single-use Carryout Bags, the quantity of Single-Use Carryout Bags in the store's inventory, and the date through which the store is requesting delayed enforcement (the date may not be later than December 31, 2020).

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Part V: Reverse preemption

This article shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Warren. The Board of Supervisors may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

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Part VI: Severability

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

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Part VII: Effective Date

The Local Law shall take effect on ~~January~~ July 1, 2019.

Warren County Board of Supervisors

RESOLUTION NO. OF 2019

RESOLUTION INTRODUCED BY SUPERVISORS STROUGH, LEGGETT, BRAYMER, WILD, MCDEVITT, DIAMOND, DICKINSON, GERAGHTY, MAGOWAN, SOKOL AND DRISCOLL

INTRODUCING PROPOSED LOCAL LAW NO. 3 OF 2019 ENTITLED “MUNICIPAL OPIOID COST RECOVERY AND PUBLIC NUISANCE LEGISLATION” AND AUTHORIZING PUBLIC HEARING THEREON

RESOLVED, that proposed Local Law No. 3 of 2019 entitled “Municipal Opioid Cost Recovery and Public Nuisance Legislation, attached hereto and made a part hereof, be, and the same is introduced before the Warren County Board of Supervisors, and in order to give interested members of the public the opportunity to be heard thereon, the Board of Supervisors shall hold a public hearing at the Supervisors Rooms in the Warren County Municipal Center on the 15th day of March, 2019 at 10:00 a.m. on the matter of the adoption of said proposed Local Law No. 3 of 2019, and be it further

RESOLVED, that the Clerk of the Board of Supervisors be, and hereby is, authorized and directed to give notice of such public hearing in the manner provided by law.

RESOLUTION No. OF 2019

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COUNTY OF WARREN
PROPOSED LOCAL LAW NO. 3 OF 2019

A LOCAL LAW ENTITLED MUNICIPAL OPIOID COST RECOVERY
AND PUBLIC NUISANCE LEGISLATION

I. Purpose and Statement of Intent

The opioid epidemic is sweeping the country. Indeed, addiction to and abuse of opioids is one of the greatest challenges facing Warren County. A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioids were sold, distributed, and prescribed in the County over the past several years, a practice that continues today. The selling, distributing, and prescribing of large amounts of opioids in our community has created a public health and safety hazard affecting the residents of the County. This crisis has devastated families, wreaked havoc on our economy, and produced a generation of narcotic dependence. As a result of the opioid epidemic, costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, and many other areas have significantly increased. Many of these costs are paid by the County.

The purpose and intent of this legislation is to allow the County to recover these costs, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and declare the opioid epidemic and its effects on the County a public nuisance. Specifically, the County provides services related to the opioid epidemic, which are funded by tax revenues. This statute clarifies that reimbursement may be sought for the costs of providing such services, whenever practicable, from the responsible party. To accomplish this, the County establishes this cost recovery procedure and declares the opioid epidemic and its effects on the County a public nuisance.

II. Definitions

“Costs” means all expenditures related to the opioid epidemic that directly or indirectly arise from the County’s response to a responsible party’s action or inaction.

“Responsible party” means any person or corporation whose negligent, intentional, or otherwise wrongful conduct causes the incident resulting in the County incurring costs or who is found liable or made responsible by a court for the costs incurred by the County in the form of damages, regardless of the cause of action.

“Wrongful Conduct” means conduct which causes the County to incur costs related to the opioid epidemic, causing it to be a public nuisance.

III. Governmental Function Cost Recovery

The County may recover the costs of governmental functions related to opioids marketed, sold, manufactured, dispensed, prescribed, and/or distributed by the responsible party. If a responsible party fails to pay the costs demanded, the County may initiate and recover costs through administrative, civil, and/or criminal action against the responsible party. In that case, the County may also recover attorney's fees, interest, and any other payment or type of damages the court deems proper.

IV. Effect of Criminal or Civil Proceedings on Governmental Function Cost Recovery

The initiation of administrative or civil proceedings for governmental function cost recovery does not bar the criminal prosecution of a responsible party for any associated violation. Similarly, criminal prosecution does not bar civil collection of costs for the violation giving rise to the criminal prosecution.

V. Public Nuisance

The County hereby finds and declares the following:

- 1) That addiction to and abuse of opioids is one of the greatest challenges facing the County;
- 2) That a cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioid pain pills were sold, distributed and prescribed in the County over the past several years which practice continues today;
- 3) That there is evidence showing that approximately four in five heroin users began their addiction by first using and then misusing prescription pain medications containing opioids;
- 4) That the unnecessary selling, distributing, and prescribing of large amounts of opioid pain pills in the County has created a public health and safety hazard affecting the residents of the County, resulting in devastation to County families, a negative effect on the County economy, wasted public resources, and a generation of narcotic dependence;
- 5) That unnecessary selling, distributing, and prescribing of prescription opioid pain pills is a hazard to public health and safety, which has created a public nuisance to the citizens of the County, and said nuisance remains unabated;

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- 6) That, in addition to all other powers and duties now conferred by law upon the County, the County is authorized to enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety;
- 7) That manufacturers of prescription opioids and those in the chain of distribution have wrongfully abused the privilege when selling and/or providing medication unnecessarily to our residents and must be held accountable; and
- 8) That it is the duty of the County to vindicate the rights of the citizens of the County and take action to abate this public nuisance.

VI. Retroactive Application

This legislation applies retroactively.