



**CITY OF ANNAPOLIS
OFFICE OF LAW**


D. Michael Lyles
City Attorney

410-263-7954
Fax 410-268-3916

MEMORANDUM

TO: Alderman Frederick Paone
Alderman Ross Arnett

CC: Mayor Gavin Buckley
David Jarrell, City Manager

THRU: D. Michael Lyles, City Attorney 

FROM: Ashley Leonard, Assistant City Attorney

DATE: February 28, 2020

Re: O-9-20 Comprehensive Bag Reduction

The Office of Law researched statutory authority to determine whether the City of Annapolis could impose a "surcharge" of 20 cents on every checkout bag provided by a dealer with a facility of at least 20,000 square feet, as envisioned by City Council Ordinance O-9-20.

Conclusion: As the City of Annapolis does not have the statutory authority to impose a tax, surcharge or fee related to checkout bags, City Council O-9-20 should either be withdrawn until such authority is obtained from the Maryland General Assembly, or modified to remove the surcharge or any similar fee.

I. General Taxing Authority

The established rule in the State of Maryland is that: "As subdivisions of the State, counties may only act when specific grants of power are conferred upon them. They do not have the power to tax on their own authority, but may do so only if the power has been granted by the State." *Eastern Diversified Properties, Inc. v. Montgomery County*, 319 Md. 45, 49 (1990). This rule also applies to municipalities like the City of Annapolis.

Chartered and code counties may impose a property tax pursuant to § 10-313 of the Local Government Article of the Annotated Code of Maryland (“MD Code”), which provides, in part: “A county may impose a tax on the value of property of any sum that may be necessary: (i) to pay the principal and interest of any loan obtained by the county according to law; (ii) to provide for the sinking fund authorized under paragraph (3) of this subsection; and (iii) for the support and maintenance of the county government.”

Municipalities have a similar power under § 5-205(d) of the Local Government Article of the MD Code, which states:

(1) Except as otherwise provided under this article, the Tax--General Article, and the Tax--Property Article, a municipality may establish and collect reasonable fees and charges: (i) for franchises, licenses, or permits granted by the municipality; or (ii) associated with the exercise of a governmental or proprietary function exercised by a municipality.

(2) A municipality may provide that any valid charge, tax, or assessment made against real property in the municipality is a lien on the property to be collected in the same manner as municipal taxes.

II. Specific Types of Taxing Authority

If a county or municipality wishes to be able to tax beyond the general authority described above, then the State of Maryland must specifically grant the authority.

For example, the City of Annapolis has the authority to “impose, by ordinance or resolution, a tax on: (1) the gross receipts derived from any admissions and amusement charge in that municipal corporation; and (2) an admission in that municipal corporation for a reduced charge or at no charge to a place if there is a charge for other admissions to the place.” This is more commonly known as the admissions and amusement tax authorized by § 4-102(c) of the Tax-General Article of the MD Code.

Or pursuant to § 10-406 of the Public Utilities Article of the MD Code, a municipality may impose an assessment not to exceed 25 cents per trip on a transportation network service.

Taxes, or “surcharges,” related to retail sales are more limited. § 11-102(c) of the Tax-General Article of the MD Code specifically states: “(1) A county, municipal corporation, special taxing district, or other political subdivision of the State may not impose any retail sales or use tax except: (i) a sales tax or use tax that was in effect on January 1, 1971; (ii) a tax on the sale or use of: 1. fuels; 2. utilities; 3. space rentals; or 4. any controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, unless the sale is made by a person who registers under and complies with Title 5, Subtitle 3 of the Criminal Law Article; or (iii) a tax imposed by a code county on the sale or use of food and beverages authorized under § 20-602 of the Local Government Article. (2) Paragraph (1) of this subsection may not be construed as conferring authority to impose a sales and use tax.”

III. Taxing Authority for Disposable/Carryout/Checkout Bags

There are only two jurisdictions in the State of Maryland that have properly enacted laws that allow for a tax, surcharge or similar fee related to disposable bags provided by retailers.

The first is Montgomery County. Pursuant to Chapter 52, Article IX of the Montgomery County Code, "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."

Montgomery County has the authority to impose this tax, because it has general taxing powers under State law similar to Baltimore City and Baltimore County. Specifically pursuant to Chapter 808 of the 1963 Laws of Maryland, the Maryland General Assembly separately "granted to Montgomery County, with designated exceptions, 'the power to tax to the same extent as the state has or could exercise said power within the limits of the county as a part of its general taxing power'" *Waters Landing Ltd. Partnership v. Montgomery County*, 337 Md. 15, 19 (1994) (quoting Chapter 808).

The second is Howard County. In the case of Howard County, the State of Maryland enacted a law specifically for Howard County to be able to impose "a fee on a store for the use of disposable bags as a part of a retail sale of products." That law is codified as § 13-1001 of the Public Utilities Local Government Article of the MD Code as "Fees imposed for use of disposable bags," and which "applies only in Howard County."

IV. Office of Law Recommendations

Given that the City of Annapolis has neither general taxing powers like Montgomery County, nor a specific provision of the MD Code like Howard County, the Office of Law concludes that the City of Annapolis does not have the authority to impose a surcharge, tax or other fee on retailers that provide disposable bags of any kind to its customers. City Council O-9-20 should either be withdrawn until such authority is obtained from the Maryland General Assembly, or modified to remove the surcharge or any similar fee.