

ORDINANCE NO.
AN ORDINANCE AMENDING BEND MUNICIPAL CODE CHAPTER 5 PUBLIC PROTECTION ADDING A NEW CHAPTER 5.60, ENCOURAGING THE USE OF REUSABLE BAGS AND BANNING SINGLE-USE PLASTIC CARRYOUT BAGS

Findings

- A. City Council desires to adopt an ordinance limiting the use of single-use carryout plastic bags, recognizing the potential to increase customer awareness of waste reduction behaviors and ways to protect the environment.
- B. The City Council finds that data and evidence shows that single-use plastic bags often contaminate recyclables and reduce recycling efficiency which ultimately may effect landfill capacity at a cost to the community and harm natural resources such as rivers and oceans.
- C. Many communities in the state of Oregon, throughout the United States and in other countries, have effectively instituted bans on single-use plastic bags and other measures to incentivize the use of reusable bags, creating greater awareness of sustainability and waste reduction. This ordinance was modeled on the approach taken in other jurisdictions in Oregon. At least 9 municipalities in Oregon have banned plastic bags, with six opting to also include a small fee for the purchase of paper bags at the checkout counter. ¹
- D. The City Council values living in the natural environment that Bend has to offer and has received numerous comments from citizens, including many youth in Bend, desiring the implementation of this ordinance.
- E. This ordinance bans single-use plastic carryout bag use by retail establishments through a phased implementation approach to enable businesses to use up their reserve stock of single-use plastic carryout bags and to minimize impacts on citizens and businesses through education and engagement.
- F. The proposed ordinance has enumerated exceptions and does not apply to temporary or impermanent events that may not have a ready ability to comply (e.g., festivals, community events, etc.) and where enforcement would be difficult.
- G. As recommended by the Northwest Grocery Association and implemented by other communities with similar ordinances, Council will adopt a fee for the reusable bags provided by retail establishments for customers who do not bring their own reusable bags; to avoid any undesirable impacts on low income

¹ Those cities include Portland (2011), Corvallis (2013), Eugene (2013), Ashland (2014), Forest Grove (2016), Hood River (2017), McMinnville (2017), Manzanita (2017), Salem (2018, effective 2019) and Milwaukee (2018, effective 2019). Recent data shows that 349 cities in the United States have banned or taxed plastic bag use throughout the United States. <https://www.forbes.com/sites/trevornace/2018/09/20/heres-a-list-of-every-city-in-the-us-to-ban-plastic-bags-will-your-city-be-next/#567939803243>

residents, customers with food stamp, WIC, SNAP or other appropriate voucher will be exempt from the fees.

- H. Food providers issuing plastic for the purpose of safeguarding public health and safety will be exempt from the ban.
- I. To prepare the community for the transition and encourage the use of reusable bags, the City will coordinate with retail establishments to conduct a public awareness campaign during the first six months following adoption of the ordinance prior to initiation of enforcement.

Based on these finding, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Code is amended by adding a new Chapter 5.60 to read as shown on the attached Exhibit A.

Section 2. Enforcement of this ordinance shall begin July 1, 2019 for all retail establishments and vendors with more than 50 full-time equivalent employees and January 1, 2020 for retail establishments and vendors with 50 or less full-time equivalent employees, to allow time for community education and to allow businesses sufficient time to implement the program and use up their reserve stock.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, it is severable and the remainder of this ordinance shall remain in full force and effect.

First Reading: December 5, 2018

Second Reading and Adoption by Roll Call Vote: December 19, 2018

YES: NO:

Casey Roats, Mayor

ATTEST:

Robyn Christie, City Recorder

Approved as to Form:

Mary A. Winters, City Attorney

Ordinance NS--

DRAFT

Exhibit A

Chapter 5.60

Encouraging the Use of Reusable Bags and Banning Single-Use Plastic Carryout Bags.

5.60.005 Purpose. This chapter is intended to discourage the use of single-use plastic bags at retail establishments, to achieve the goals of increasing consumer awareness related to sustainability and waste, saving community costs related to recycling inefficiency and landfill capacity, and address increasing concerns with the negative environmental impacts of plastic.

5.60.010 Definitions.

As used in this chapter, the following definitions apply:

- A. **ASTM standard** means the American Society for Testing and Materials (ASTM)'s International D-6400.
- B. **Carryout bag** means any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. "Carryout bag" does not include:
1. Bags used by consumers inside retail establishments to:
 - a. Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;
 - b. Contain or wrap meat, fish, or frozen foods, whether packaged or not;
 - c. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - d. Contain unwrapped prepared foods or bakery goods;
 - e. Pharmacy prescription bags;
 2. Laundry dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage waste, pet waste, or yard waste; or
 3. Product or produce bags.
- C. **City sponsored event** means any event organized or sponsored by the City.
- D. **Customer** means any person obtaining goods from a retail establishment, vendor or event.

E. **Food provider** means any entity in the City that provides prepared food for public consumption on or off its premises.

F. **Grocery store** means any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared, or frozen food or beverage products and similar items.

G. **Pharmacy** means a retail establishment where a pharmacist licensed by the State of Oregon's Board of Pharmacy practices pharmacy and where prescription medications are offered for sale.

H. **Product or produce bag** means any bag without handles provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point of sale.

I. **Recyclable paper bag** means a paper bag that is 100% recyclable and contains a minimum of 40% post-consumer recycled content, and is capable of composting consistent with the timeline and specifications for the ASTM Standards as defined in this section.

J. **Retail establishment** means any store, grocery store, sales outlet, shop, restaurant, pharmacy or other commercial establishment located within or doing business within the geographic limits of the City that sells or offers for sale perishable or nonperishable goods.

K. **Reusable bag** means a bag with handles that is specifically designed and manufactured for long-term multiple reuses made of either durable plastic with a thickness no less than 2.25 mils thick or other non-plastic material such as machine washable cloth or woven synthetic fiber.

L. **Single-use plastic carryout bag** means any carryout bag made predominately of plastic, either petroleum or biologically based, and made available by a retail establishment to a customer at the point of sale. It does not include reusable bags, recyclable paper bags, or bags exempted from the definition of carryout bag.

M. **Undue hardship** means circumstances or situations unique to the particular retail establishment that results in no reasonable alternatives to the use of single-use plastic carryout bags or which results in the inability to collect a recyclable paper bag pass-through cost.

5.60.015 Plastic Bag Use Regulations.

Except as otherwise provided in this chapter or exempted, no retail establishment will provide or make available to a customer a single-use plastic carryout bag.

5.60.020 Pass-Through Cost.

Except as otherwise provided in this chapter, when a retail establishment makes a

recyclable paper bag available to a customer at the point of sale, the retail establishment will:

- A. Charge the customer a reasonable pass-through cost of not less than ten cents per recyclable paper bag provided to the customer; and not rebate or otherwise reimburse any customer any portion of the pass-through cost; and
- B. Indicate on the customer's transaction receipts the total amount of the recyclable paper bag pass-through charge.

5.60.025 Exemptions.

Notwithstanding any other provision of this chapter:

- A. Single-use plastic carryout bags may be distributed to customers by food providers for the purpose of safeguarding public health and safety during the transportation of prepared take-out foods and prepared liquids intended for consumption away from the food provider's premises.
- B. A retail establishment must provide a reusable bag or a recyclable paper bag at no cost at the point of sale upon the request of a customer who uses:
 - 1. A voucher issued under the Women, Infants and Children (WIC) program established in the Oregon Health Authority under ORS 413.500; or
 - 2. An Electronic Benefits Transfer (EBT) card, such as an Oregon Trail Card, to access Supplemental Nutrition Assistance Program (SNAP) benefits.
- C. Vendors and organizers at temporary or nonpermanent events (such as retail fairs, farmers markets, holiday fairs, special events, sports events, etc.) are not subject to this chapter.
- D. Retail establishments may distribute product bags and make reusable bags available to customers whether through sale or otherwise.
- E. The City Manager or the designee may exempt a retail establishment from the requirements of this chapter for a period of up to one year upon the retail establishment showing, in writing, that this code would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption must be in writing, and the City Manager's or designee's decision shall be final.

5.60.030 Promotion of Reusable Bags.

- A. Retail establishments may distribute product bags and make reusable bags available to customers whether through sale or otherwise.
- B. Retail establishments are encouraged to educate their staff to promote reusable

bags and to post signs encouraging customers to use reusable bags.

C. City will develop online information in support of reusable bags.

5.60.035 Implementation and Enforcement.

A. The City Manager shall have the authority to establish administrative rules and regulations consistent with the provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the provisions of this chapter. A copy of such rules or regulations shall be on file in the Office of the City Recorder and posted on the City's website.

B. Any person who violates the provisions of this ordinance shall be guilty of an infraction, subject to the enforcement authority of Bend Code Chapter 1.40. Violation is a Class B civil infraction subject to penalties, which include monetary fines for each separate offense as follows:

- (1) No more than \$100 for first violation;
- (2) No more than \$200 for second violation the same calendar year;
and
- (3) No more than \$400 for any subsequent violation within the same calendar year.