

ORDINANCE NO. 2348

AN ORDINANCE REPEALING SECTION 5.65 OF THE BEND CODE PERTAINING TO THE PLASTIC BAG BAN

Findings

- A. On December 19, 2018, the City Council adopted Ordinance 2319 to encourage the use of reusable bags and limit the use of carryout plastic bags. The Council did so after numerous citizens expressed their desire to implement a plastic bag ban in the City of Bend. The ordinance had an effective date of July 1, 2020.
- B. During the 2019 legislative session, the State Legislature passed HB 2509, which will go into effect January 1, 2020. HB 2509 is a state-wide plastic bag ban that is substantially similar to the Bend Ordinance. Because the new state law is functionally equivalent to the City's Ordinance and sufficient to meet Council's goals, Council finds no compelling reason to impose additional restrictions.
- C. The City has previously amended its code to minimize local matters already covered by state law. Overlapping state and local laws can be administratively costly and may cause confusion to consumers, business owners, and enforcement agencies. Repealing the City's plastic bag Ordinance would be consistent with this policy.
- D. Similar to the City's Ordinance, HB 2509 prohibits the use of "single use checkout bags" and includes as "pass-through fee" of no less than \$0.05 for recycled paper bags, reusable plastic bags, and reusable plastic checkout bags. This prohibition and fee is applicable to both retail establishments and restaurants. In order to avoid undesirable impacts on low-income residents, the "pass-through fee" does not apply to those with an appropriate voucher or EBT customers.
- E. HB 2509 also has exceptions that allow plastic bags to be used in certain situations where enforcement would be difficult or enforcement would jeopardize public health and safety. A copy of HB 2509 is attached to the Ordinance as Exhibit A.
- F. Violations of HB 2509 are subject to a maximum fine of \$250 per day. Each day the violation is subsequently committed amounts to a new offense. The State has the responsibility to enforce these provisions, rather than the City of Bend.
- G. The City has been coordinating public awareness and education campaigns for the Bend Ordinance, but the State will now handle these outreach campaigns. The City's policy will be to defer to state communication efforts and to direct Bend residents to these resources.

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

Section 1. Bend Code Section 5.65 is stricken in its entirety as shown on the attached Exhibit B.

Section 2. All other provisions of the Bend Code remain unchanged and in full effect.

First Reading: July 17, 2019

Second Reading and adoption by roll call vote: August 7, 2019

YES: Sally Russell, Mayor NO: none
Bruce Abernethy
Barb Campbell
Bill Moseley
Justin Livingston
Gena Goodman-Campbell
Chris Piper



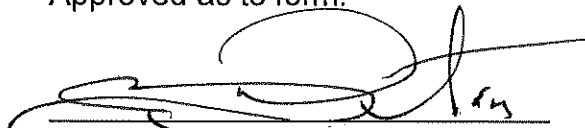
Sally Russell, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office

EXHIBIT A

80th OREGON LEGISLATIVE ASSEMBLY--2019 Regular Session

Enrolled House Bill 2509

Sponsored by Representatives PILUSO, SOLLMAN, GORSEK, RAYFIELD, Senators DEMBROW, HASS; Representatives GOMBERG, KENY-GUYER, MCKEOWN, MCLAIN, MITCHELL, NERON, NOSSE, SANCHEZ, SCHOUTEN, SMITH WARNER, WILDE, Senator MONNES ANDERSON (Presession filed.)

CHAPTER

AN ACT

Relating to checkout bags; creating new provisions; and repealing ORS 459A.695.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this section and sections 2, 3 and 5 of this 2019 Act:

(1) "Garment bag" means a large bag that incorporates a hanger on which garments may be hung to prevent wrinkling during travel or storage.

(2) "Local provision" means a charter provision, ordinance, resolution or other provision adopted by a city, county or other local government, as defined in ORS 174.116.

(3) "Recycled paper checkout bag" means a paper bag that contains at least 40 percent post-consumer recycled fiber.

(4) "Restaurant" means an establishment where the primary business is the preparation of food or drink:

(a) For consumption by the public;

(b) In a form or quantity that is consumable then and there, whether or not it is consumed within the confines of the place where prepared; or

(c) In consumable form for consumption outside the place where prepared.

(5) "Retail establishment" means a store that sells or offers for sale goods at retail and that is not a restaurant.

(6) "Reusable fabric checkout bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine-washable fabric.

(7) "Reusable plastic checkout bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of durable plastic that is at least four mils thick.

(8)(a) "Single-use checkout bag" means a bag made of paper, plastic or any other material that is provided by a retail establishment to a customer at the time of checkout, and that is not a recycled paper checkout bag, a reusable fabric checkout bag or a reusable plastic checkout bag.

(b) "Single-use checkout bag" does not mean:

(A) A bag that is provided by a retail establishment to a customer at a time other than the time of checkout, including but not limited to bags provided to:

(i) Package bulk items such as fruit, vegetables, nuts, grains, greeting cards or small hardware items, including nails, bolts or screws;

- (ii) Contain or wrap frozen food, meat, fish, flowers, a potted plant or another item for the purpose of addressing dampness or sanitation;
 - (iii) Contain unwrapped prepared food or a bakery good; or
 - (iv) Contain a prescription drug;
- (B) A newspaper bag, door hanger bag, garment bag, laundry bag or dry cleaning bag; or
- (C) A bag sold in a package containing multiple bags for uses such as food storage, garbage containment or pet waste collection.

SECTION 2. (1) Except as provided in subsection (2) of this section, a retail establishment may not provide:

(a) Single-use checkout bags to customers.

(b) Recycled paper checkout bags, reusable fabric checkout bags or reusable plastic checkout bags to customers unless the retail establishment charges not less than five cents for each recycled paper checkout bag, reusable fabric checkout bag or reusable plastic checkout bag.

(2) A retail establishment may provide:

(a) Reusable fabric checkout bags at no cost to customers as a promotion on 12 or fewer days in a calendar year.

(b) Recycled paper checkout bags or reusable plastic checkout bags at no cost to customers who:

(A) Use a voucher issued under the Women, Infants and Children Program established under ORS 413.500.

(B) Use an electronic benefits transfer card issued by the Department of Human Services.

(3) Except as provided in subsection (4) of this section, a restaurant may not provide:

(a) Single-use checkout bags to customers.

(b) Reusable plastic checkout bags to customers unless the restaurant charges not less than five cents for each reusable plastic checkout bag.

(4) A restaurant may provide:

(a) Recycled paper checkout bags at no cost to customers.

(b) Reusable plastic checkout bags at no cost to customers who use an electronic benefits transfer card issued by the Department of Human Services.

SECTION 3. To prohibit or limit the use of recycled paper checkout bags, reusable fabric checkout bags, reusable plastic checkout bags or single-use checkout bags by a restaurant or retail establishment, a city, county or other local government, as defined in ORS 174.116:

(1) May adopt a local provision that establishes definitions, requirements and restrictions that are identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.

(2) May amend a local provision that was in effect before the effective date of this 2019 Act so the local provision establishes definitions, requirements and restrictions that are identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.

(3) May adopt, amend or enforce a local provision to impose a penalty other than the penalty established by section 4 of this 2019 Act. A restaurant or retail establishment may be charged with a violation under either the local provision or section 4 of this 2019 Act, but not both.

(4) May not adopt or enforce a local provision that establishes definitions, requirements or restrictions that are not identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.

(5) Notwithstanding subsection (4) of this section, may adopt, amend or enforce a local provision to require a restaurant or retail establishment to charge a fee of more than five cents under provisions otherwise identical to section 2 (1)(b) and (3)(b) of this 2019 Act.

SECTION 4. (1) Notwithstanding ORS 153.018 (3), a violation of section 2 of this 2019 Act by a restaurant or retail establishment, as those terms are defined in section 1 of this 2019 Act, is a Class D violation subject to a maximum fine of \$250.

(2) Each day that the restaurant or retail establishment commits a violation constitutes a separate offense.

SECTION 5. (1) The Department of Environmental Quality shall produce a report on the impacts of sections 2 and 3 of this 2019 Act that assesses, in retail establishments that primarily sell groceries:

(a) Collection of the fee described in section 2 (1)(b) of this 2019 Act; and

(b) Customers' use of recycled paper checkout bags, reusable fabric checkout bags and reusable plastic checkout bags.

(2) No later than September 15, 2024, retail establishments that primarily sell groceries shall provide to the department the information described in subsection (1) of this section.

(3) No later than September 15, 2025, the department shall submit the report described in subsection (1) of this section, in the manner provided by ORS 192.245, to an interim committee of the Legislative Assembly related to the environment.

SECTION 6. Section 5 of this 2019 Act is repealed on December 31, 2025.

SECTION 7. ORS 459A.695 is repealed.

Passed by House April 25, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 11, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State

EXHIBIT B

Chapter 5.65

ENCOURAGING THE USE OF REUSABLE BAGS AND LIMITING USE OF CARRYOUT PLASTIC BAGS* Revised 1/19

Sections:

- 5.65.005 — Purpose. Revised 1/19
- 5.65.010 — Definitions. Revised 1/19
- 5.65.015 — Plastic Bag Use Regulations. Revised 1/19
- 5.65.020 — Pass Through Cost. Revised 1/19
- 5.65.025 — Exemptions. Revised 1/19
- 5.65.030 — Promotion of Reusable Bags. Revised 1/19
- 5.65.035 — Implementation and Enforcement. Revised 1/19

* — Code reviser's note: Ord. NS 2319 adds the provisions of this chapter as Chapter 5.60. The chapter has been editorially renumbered to prevent duplication of numbering.

— Section 2 of Ord. NS 2319 provides for this chapter to take effect July 1, 2019, and Section 3 of Ordinance NS-2319 provides for enforcement of this chapter to begin January 1, 2020.

5.65.005 — Purpose. Revised 1/19

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

B. — Nothing in this chapter is intended to prevent or regulate the ability of a customer from using or bringing a reusable bag, recyclable paper bag, backpack, box, container, cloth bag, or any other type of reusable container to a retail establishment for use in carrying away purchases. [Ord. NS 2319, 2018]

5.65.010 — Definitions. Revised 1/19

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 plastic bag** means any bag, made predominantly of plastic of less than 2.25 mils thick, either petroleum or biologically based, and made available to or 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. It does not include reusable bags, recyclable paper bags, or bags exempted from the definition of carryout bag. "Carryout plastic 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. — ~~Customer means any person obtaining goods from a retail establishment.~~
- D. — ~~Food provider means any entity or restaurant in the City that provides prepared food for public consumption on or off its premises.~~
- E. — ~~Grocery store means any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared, or frozen food or beverage products and similar items.~~
- F. — ~~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.~~
- G. — ~~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.~~
- H. — ~~Recyclable paper bag means a paper bag that is 100 percent recyclable and contains a minimum of 40 percent post-consumer recycled content, and is capable of composting consistent with the timeline and specifications for the ASTM standard as defined in this section.~~
- I. — ~~Retail establishment means any store, grocery store, vendor, sales outlet, shop, 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.~~
- J. — ~~Reusable bag means a bag, with or without 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 or other nonplastic material such as machine washable cloth or woven synthetic fiber.~~
- K. — ~~Undue hardship means circumstances or situations unique to the particular retail establishment that result in no reasonable alternatives to the use of carryout plastic bags or which result in the inability to collect a recyclable paper bag or reusable plastic bag pass-through cost. [Ord. NS-2319, 2018]~~

5.65.015 — Plastic Bag Use Regulations. — Revised 1/19

Except as otherwise provided in this chapter or exempted, no retail establishment will provide or make a plastic carryout bag available to a customer. [Ord. NS-2319, 2018]

5.65.020 — Pass Through Cost. — Revised 1/19

Except as otherwise provided in this chapter, when a retail establishment makes a recyclable paper bag or reusable plastic 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 \$0.10 per recyclable paper bag or reusable plastic bag provided by the retail establishment; 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 pass-through cost. [Ord. NS-2319, 2018]~~

5.65.025 — Exemptions. — Revised 1/19

Notwithstanding any other provision of this chapter:

A. ~~Carryout plastic 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 plastic 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. ~~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. [Ord. NS 2319, 2018]~~

5.65.030 — Promotion of Reusable Bags. Revised 1/19

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 use available business techniques to encourage customers to use reusable bags for use in transporting purchases.~~

C. ~~City will develop online information in support of reusable bags and use available City resources to engage in community and business outreach. [Ord. NS-2319, 2018]~~

5.65.035 — Implementation and Enforcement. Revised 1/19

A. ~~The City Manager shall have the authority to establish administrative rules, regulations and procedures 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 any adopted 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 chapter shall be guilty of an infraction, subject to the enforcement authority of BC Chapter 1.40. A person is the one who provides or makes available a carryout plastic bag to customers in violation of this chapter, and/or the person or business entity (e.g., corporation, firm, partnership, association, limited liability entity, cooperative) who owns a retail establishment that provides or makes available a carryout plastic bag to customers, or is an agent, officer, or manager, director, or employee who exercises authority over the retail establishment that provides or makes available a carryout plastic bag to customers. Violation is a Class B civil infraction subject to penalties, which include monetary fines for each separate offense as follows:~~

- ~~1. No more than \$100.00 for first violation;~~
- ~~2. No more than \$200.00 for second violation the same calendar year; and~~
- ~~3. No more than \$400.00 for any subsequent violation within the same calendar year. [Ord. NS-2319, 2018]~~