

ORDINANCE O-11-21

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING CHAPTER 9, HEALTH AND SANITATION, OF THE CITY CODE OF THE CITY OF BISBEE, BY THE ADDITION OF ARTICLE 9.7, REGULATION OF DISPOSABLE CARRYOUT BAGS, AND PROVIDING FOR SEVERABILITY.

WHEREAS, the widespread use of disposable carryout bags results in a significant amount of waste material, creates additional burdens upon the City's solid waste collection system, and increases the sanitation costs for the City and its residents; and

WHEREAS, plastic carryout bags in particular result in a significant amount of wind-blown litter, resulting in visual blight and adverse impacts upon our desert environment; and

WHEREAS, the production and delivery of disposable carryout bags consumes a significant amount of both renewable and non-renewable resources to provide what is essentially waste material; and

WHEREAS, the City's actions to reduce the amount of waste material produced for and used by this community are consistent with the goals and objectives of the U. S. Mayors' Climate Protection Agreement, as previously adopted by the City of Bisbee; and

WHEREAS, it would preferable if the goal of reducing the amount of disposable carryout bags that are used in this community can be accomplished through voluntary efforts and City staff are hereby directed to attempt to achieve this result by voluntary means, if that is practical; and

WHEREAS, should it prove to be necessary to impose a small fee upon the use of disposable carryout bags in order to reduce their usage, that alternative will be considered by Mayor and Council following the City Manager's report on the results of the voluntary programs, at the end of the first six months of this effort; and

WHEREAS, these amendments are in the best interests of the City and its citizens and are within the authority granted to the Mayor and Council by Sections 1.03 and 6.02 of the City Charter of the City of Bisbee,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Bisbee as follows:

ORDINANCE O-11-21

Section 1: That Chapter 9, Health and Sanitation, of the City Code of the City of Bisbee, is hereby amended by the addition of Article 9.7, Regulation of Disposable Carryout Bags, as specified in the attached Exhibit A, incorporated herein by reference.

Section 2: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee, this ____ day of _____, 2011.

APPROVED:

W.J. Porter, Mayor

ATTEST:

Gloria P. Gonzalez, City Clerk

APPROVED AS TO FORM:

John A. MacKinnon, City Attorney

EXHIBIT A

**AMENDMENT TO CHAPTER 9 OF THE CITY CODE, HEALTH AND
SANITATION; AND CEMETERY**

[New Article]

ARTICLE 9.7 REGULATION OF DISPOSABLE CARRYOUT BAGS

9.7.1 Findings and Purpose

The Mayor and Council of the City of Bisbee hereby find that:

- A. The widespread practice by retail stores of supplying disposable carryout bags to their customers results in a significant amount of waste material and creates additional burdens on the City's solid waste collection system, resulting in more costs to the City and its citizens.
- B. Plastic carryout bags in particular result in a significant amount of wind-blown litter throughout our high desert landscape, resulting in visual blight and adverse impacts upon this environment. The fact that these plastic bags do not decompose, but only break down into smaller particles, results in the potential for their chemical components to be ingested or taken up by other organisms, with potentially harmful effects to the natural environment.
- C. Carryout bags that are not properly disposed of can result in clogged sewer lines and otherwise adversely impact the City's sanitary sewer systems and give rise to costly repairs and maintenance of public infrastructure.
- D. The production and delivery of disposable carryout bags consumes a large amount of both renewable and non-renewable resources on an annual basis, and even though these account for only a small percentage of our total national use of oil and natural gas, this usage still constitutes a significant amount of total energy expended on what is essentially waste material.
- E. The amount of waste material being produced, the amount of energy being consumed, and the amount of litter in our local environment will all be reduced if the use of disposable carryout bags in our community is reduced and the use of reusable carryout bags is encouraged.
- F. This action to reduce the amount of energy that is expended by and for this community and to decrease the amount of waste material produced in this community is consistent with goals and objectives of the U. S. Mayor's Climate Protection Agreement that has been previously approved the City of Bisbee.
- G. It would be preferable if these positive results could be achieved through strictly voluntary means. The City is prepared to participate with both the business community and private citizen groups to allow for an

ORDINANCE O-11-21

- opportunity to determine if voluntary actions may be a viable means of achieving these positive results.
- H. Other communities have found that the adoption of a relatively small fee for the use of disposable carryout bags has significantly reduced the usage of such bags and encouraged the use of reusable carryout bags. That option will be considered for implementation in the event that voluntary means for the reduction in disposable carryout bag usage are not successful.
 - I. If any such fee is enacted, the proceeds of this fee should be used for actions that will result in the reduction of general fund expenses for the management of solid waste and the recycling of waste materials.
 - J. The implementation of any such regulation will be more likely to be successful if there is sufficient lead time prior to the effective date and this regulation is implemented in phases.

9.7.2 Definitions

A. “Disposable carryout bag” means a bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale or checkout counter to carry purchases from the store and that is not designed as a reusable carryout bag. “Disposable carryout bag” does not include bags made available to consumers inside stores, prior to arrival at the checkout counter, to be used to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; to be used to contain or wrap frozen foods, meat or fish, whether prepackaged or not; to be used to separate flowers or potted plants, or other damp items that may need to be separated from other purchases; to be used to protect or separate prepared foods or bakery goods; used by pharmacists to contain prescription drugs; newspaper bags; or bags sold in packages containing multiple bags and intended for use outside of the store to contain garbage, pet waste, yard waste or other materials.

B. “Retail Establishment” means a licensed business located within the City of Bisbee that provides one or more consumer items to its customers intended for off-site use or consumption.

C. “Reusable carryout bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either made of cloth, fiber or other machine washable fabric, or made of durable plastic material that is at least 2.25 millimeters thick.

9.7.3 Implementation of Voluntary Programs

A. The City Manager, with assistance of City staff, is directed to attempt to coordinate with local businesses, business groups, environmental groups, service groups, interested citizens and the local schools to attempt to develop one or more voluntary programs that will significantly limit the usage of disposable carryout bags in this

ORDINANCE O-11-21

community, increase the amount of disposable carryout bags that are reused and recycled, and increase the usage of reusable carryout bags in this community.

B. Within six (6) months of the effective date of this ordinance, the City Manager shall report to the Mayor and Council at a regularly scheduled Council meeting on the status of this voluntary program; the efforts that have been made to develop a coordinated response by the city, businesses and community groups; any successes that have been achieved; and the City Manager's opinion as to the prospects for the future success of any such voluntary programs, based on the levels of interest and participation that he has observed during this period. The City Manager may include his recommendations for the continuation of this program or the initiation of any other action.

C. Based upon this report, the Mayor and Council will then decide whether or not to continue with the voluntary efforts; to implement the additional components of this Article, with the schedules and phases that they determine to be appropriate; or to proceed with a combination of the two. Articles 9.7.4 through 9.7.7 shall only become effective upon a specific determination by a majority of the members of the Bisbee City Council, after consideration of this report, that these provisions are necessary to achieve the desired results. If implemented, they will become effective on the dates to be established by the Mayor and Council in connection with any such action.

9.7.4 Establishment of a Fee for the Use of Disposable Carryout Bags

A. Upon the effective date of this section, a fee of Five Cents (\$0.05) per disposable carryout bag shall be collected from consumers who make purchases from a retail establishment that is subject to these regulations and who accept a disposable carryout bag or bags from that establishment. This per bag fee is subject to the following conditions:

1. Fees must be paid by the consumer at the time of purchase.
2. Retail Establishments may not pay the fee on behalf of consumers.
3. All Retail Establishments shall indicate on the consumer transaction receipt the number of disposable carryout bags provided to that customer and the total amount of the fee that was charged.

B. The per bag fee of Five Cents per bag shall be distributed as follows:

1. To the Retail Establishment, One Cent (\$0.01) may be retained as a reimbursement for the cost of the bag, or to subsidize the cost of providing reusable carryout bags, and One Cent (\$0.01) may be retained as a reimbursement of the administrative costs incurred by the Retail Establishment in the collection and distribution of this fee, for a total of Two Cents (\$0.02).

ORDINANCE O-11-21

2. To the City of Bisbee, Finance Department, the remainder of the fee collected for each bag, to be deposited into the City of Bisbee Environmental Fund.

C. The fees are to be distributed to the City of Bisbee Finance Department by each Retail Establishment subject to these fees, on a monthly basis, on or before the fifteenth day of the subsequent month, if the amount of the fees equals or exceeds Two Hundred and Fifty Dollars per month; and on a quarterly basis, on or before the fifteenth day of the subsequent quarter, if the amount of the fees is less than that on a monthly basis. Each submittal to the City of Bisbee shall include an itemization of the number of disposable carryout bags provided during that period and a signed verification that this accounting is true and correct, to the best of the knowledge and information of the submitter. The Finance Director may provide forms for this purpose.

9.7.5 The City of Bisbee Environmental Fund

The City of Bisbee Environmental Fund is a special revenue fund, established and maintained by the Finance Director, for the deposits of the City's portion of the per bag fee and such other revenue as may be dedicated or donated to this Fund. The City of Bisbee Environmental Fund shall be used for the following purposes, as specifically allocated by the Mayor and Council in each annual budget:

- A. Providing reusable carryout bags to City residents, with a priority of assisting seniors, the disabled and low-income members of this community.
- B. Purchasing additional equipment, vehicles and supplies to enhance the recycling program of the City of Bisbee.
- C. Promoting and supporting conservation, clean-up and recycling programs within this community.
- D. Promoting and supporting education programs for the general public and school groups, regarding recycling, reduction and reuse of materials and protection of the local environment.
- E. Paying for the administration of these regulations and the collection of the fees.

9.7.6 Phased Implementation

The fee for the use of disposable carryout bags, if and when implemented, shall be applied in phases to the retail business community, as necessary to allow for the orderly

ORDINANCE O-11-21

transition into this process. The Phases, with specific dates to be established by the Mayor and Council in connection with the implementation of this rule, are as follows:

- A. Phase One. All retail establishments with gross annual sales, as reported to the Arizona Department of Revenue, in excess of One Million Dollars (\$1,000,000.00) in the preceding calendar year.
- B. Phase Two. All retail establishments with gross annual sales, as reported to the Arizona Department of Revenue, in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the preceding calendar year.
- C. Phase Three. All retail establishments.

9.7.7 Violations, Penalties and Enforcement

The failure of any retail establishment that is subject to these regulations to collect and remit the required fees to the City of Bisbee shall be a civil violation, subject to the following penalties:

- A. For a first violation, a written warning and notice of violation shall be issued to the manager or owner of the retail establishment. No fine shall be assessed for a first violation.
- B. For a second violation, a civil penalty of One Hundred Dollars (\$100.00).
- C. For a third violation, a civil penalty of Two Hundred Dollars (\$200.00).
- D. For each subsequent violation, a civil penalty of Five Hundred Dollars (\$500.00).

No more than one violation shall be issued to a retail establishment within any seven (7) day period. A violation that occurs more than twelve (12) months after a prior violation by the same establishment shall be treated as a “first violation.” If the retail establishment is incorporated or otherwise constituted as a separate legal entity, the violation notice shall be issued to that legal entity. If the retail establishment is operated as a sole proprietorship or by one or more individual partners, the violation notice shall be issued to one or more of the individual owners.

If the retail establishment has violated these regulations repeatedly and been subject to more than one Five Hundred Dollar civil penalty, that retail establishment may be subject to an injunction, ordering it to cease doing business in the City of Bisbee unless and until it complies with these regulations and terminating its existing business license, ending its authorization it to conduct business in the City of Bisbee, pending such compliance.

ORDINANCE O-11-21

The City Manager is authorized to designate City staff to implement this program, inspect retail establishments for compliance, initiate enforcement actions and to pursue any necessary judicial actions to collect unpaid penalties and enforce these provisions.