

**ORDINANCE NO. 1231**

**AN ORDINANCE AMENDING CHAPTER 40 (SOLID WASTE), ARTICLE II (LITTER CONTROL) OF THE TOWN OF SILVER CITY MUNICIPAL CODE, BY ADDING A NEW SECTION 40-27 (REDUCTION OF SINGLE-USE PLASTIC CARRYOUT BAGS)**

**Sponsor: Councilor Cynthia Ann Bettison**

**WHEREAS**, the Town Council has the power and authority to make regulations to secure the general health and public welfare of the Town pursuant to its Charter, specifically Sections 5, 10, 11, and 12, and pursuant to State of New Mexico Statutes §3-18-1, §3-18-8 and §3-18-17; and

**WHEREAS**, Chapter 40, Article II of the Town's Municipal Code regulates littering within the Town; and

**WHEREAS**, the Town Council of the Town of Silver City finds that the proliferation of the use of single-use plastic carryout bags by commercial retail businesses within the Town contributes to litter upon both public and private land; and

**WHEREAS**, the Town Council finds that because the nature of plastic bags, wind conditions make it likely that such litter will move around the Town, presenting a continuing re-deposition of litter which is likely to have the effect of magnifying the amount of litter within the Town, and causing the Town to appear unsightly; and

**WHEREAS**, the Town Council finds that the proliferation of plastic bag litter has a negative effect upon the residents of the Town by creating an aesthetically displeasing environment; and

**WHEREAS**, the Town Council finds that there is a likelihood that the unsightly appearance of the Town will have a detrimental effect on tourism, with negative economic consequences for the Town and its inhabitants; and

**WHEREAS**, the Town Council finds that a set of reasonable regulations designed to reduce the use of single-use plastic carryout bags by retail establishments will be beneficial to the Town; and

**WHEREAS**, the Town Council finds that the use of reusable bags and recyclable paper grocery bags by retail establishments in the Town would lessen the long term effects of litter, and reduce deposits in the regional landfill; and

**WHEREAS**, the Town Council has deemed that the amendments to the Town's Code of Ordinances as provided for herein are necessary for the health, safety and welfare of the inhabitants of the Town;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO**, that:

Chapter 40, Article II, is hereby amended to include a new subsection:

**Sec. 40-27. Reduction of single-use plastic carryout bag use.**

A. Definitions: For the purposes of this Ordinance, the following words shall have the following meanings:

- (a) *Single-Use Plastic Carryout bag* means a carryout bag made of plastic that is provided by a retail establishment to a customer at the point of sale or checkout, that is neither intended nor suitable or durable for continuous reuse as a carryout bag or a plastic bag that is less than 2.25 mils thick.
- (b) *Reusable bag* means a bag with handles that is specifically designed and manufactured for multiple reuse and is either:
  - i. Made of cloth or other machine washable fabric;
  - ii. Made of durable plastic that is at least 2.25 mils thick; or
  - iii. Other durable material suitable for reuse.
- (c) *Recyclable paper bag* means a paper bag that meets the following requirements:
  - i. Contains a minimum average of 40 percent post-consumer recycled paper content; or
  - ii. Is certified by either the Forest Stewardship Council (FSC) or Sustainable Forestry Initiative (SFI); and

iii. Recyclable means material that is acceptable for recycling by the Town's and Grant County's available recycling collection programs. Recycling does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

(d) The following bags are excluded from this ordinance:

- i. Paper bags provided by pharmacies for the purpose of containing medications or other prescriptions;
- ii. Paper bags provided for the containment of carryout beverages or liquor sales;
- iii. Garment or laundry bags from any material;
- iv. Plastic bags provided to effect convenience and food safety by preventing contamination from any bulk, cooked, chilled, frozen or raw food.
- v. Paper bags customarily provided by a retail establishment as its primary bag as of the effective date of this ordinance.

(e) *Retail establishment* means any retail business including, without limitation, clothing, household goods, or personal items of any kind that sells directly to a customer. Examples include, but are not limited to, department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, and farmers markets. For purposes of this Ordinance, food banks, public eating establishments defined as restaurants, take-out food establishments, or any other business that receives 90% or more of its revenue from the sale of food, which is prepared on the premises, to be eaten on or off its premises, are not defined as retail establishments.

(f) *Person* shall mean a natural person operating a retail business, a business entity of any character operating a retail establishment, and any individual branch, outlet, or location of a retail business located within the Town.

#### B. MANDATORY USE OF REUSABLE BAGS AND RECYCLABLE PAPER BAGS.

- (a) All covered retail establishments shall provide only the following bag types at checkout to customers: reusable bags, recyclable paper bags and/or cardboard boxes.
- (b) Nothing in this section shall be read to preclude retail establishments from making reusable bags available for sale to customers.

#### C. ENFORCEMENT, PENALTIES, AND ADMINISTRATIVE REMEDIES.

- (a) Any person who violates this Ordinance shall be guilty of a municipal offense, and upon conviction thereof, said person shall be punished by a fine not less than \$100.00 nor more than \$500 for each offense. Each day of violation shall be considered a separate offense.
- (b) The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this Ordinance, and the Town shall be entitled to recover costs and attorneys fees incurred therein.
- (c) If a person or retail establishment has evidenced a pattern of non-compliance with the provisions of this Ordinance, the Code Enforcement Officer of the Town shall refer the

matter to the Town Council, who may, after public hearing, revoke the business license or registration of the offending party. A pattern of non-compliance may be evidenced by multiple violations of this Ordinance as well as proof of administrative attempts at gaining compliance.

**D. OPERATIVE DATE.**

All of the requirements set forth in this Ordinance shall become effective six (6) months after its adoption date.

**E. SEVERABILITY.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional.

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 8th day of July, 2014.

(Seal)

TOWN OF SILVER CITY

/s/

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Michael S. Morones, Mayor

ATTEST:

/s/

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Ann L. Mackie, Town Clerk