

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

Findings

- A. Recognizing the potential to increase customer awareness of waste reduction behaviors and protection of the environment, the City Council desires to adopt an Ordinance encouraging the use of reusable bags and limiting the use of carryout plastic bags.
- B. The City Council finds that data and evidence shows that carryout plastic bags often contaminate recyclables and reduce recycling efficiency, which ultimately may effect landfill capacity at a cost to the community, and that plastic pollution harms 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 carryout 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 or limited carryout plastic bag use, 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 to protect it.
- E. 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. Food providers issuing plastic for the purpose of safeguarding public health and safety will be exempt from this Ordinance.
- F. As recommended by the Northwest Grocery Association and implemented by other communities with similar ordinances, Council intends to adopt a “pass-through fee” for recyclable paper bags or the thicker, multiple-use plastic bags provided by retail establishments for customers who do not bring their own reusable bags; to avoid any undesirable impacts on low income residents,

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>

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

- G. To prepare the community for the transition and encourage the use of reusable bags, the Council directs the Communications Department and Business Advocate to coordinate with retail establishments and to conduct a public awareness campaign during the first six months following the effective date of the Ordinance.
- H. To this end, Council is delaying the effective date of this Ordinance to July 1, 2019, to enable businesses to use up their reserve stock of plastic carryout bags and to minimize impacts on citizens and businesses through education and engagement.
- I. Council also desires to delay enforcement for one year from its adoption, until January 1, 2020, to allow businesses time to comply and city departments time to administer enforcement of this new program, and directs the Code Enforcement Department to take the necessary actions consistent with this direction.
- J. It is Council's intent to review the program within three years (by December of 2021) of adoption to assess its effectiveness in encouraging the use of reusable bags and limiting the use of carryout plastic bags, based on information gathered from the community and businesses.

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 Title 5, Public Protection, to read as shown on the attached Exhibit A.

Section 2. Effective Date of Regulations. This Ordinance shall take effect on July 1, 2019, to allow time for community education and sufficient time for businesses to implement the program and use up their reserve stock of carryout plastic bags.

Section 3. Enforcement. Enforcement of this Ordinance shall begin January 1, 2020 for all retail establishments, to allow city departments sufficient time to administer the enforcement of this new program.

Section 4. 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

Ordinance NS--

YES:

NO:

Casey Roats, Mayor

ATTEST:

Robyn Christie, City Recorder

Approved as to Form:

Mary A. Winters, City Attorney

Exhibit A

Title 5

PUBLIC PROTECTION

Chapter 5.60

Encouraging the Use of Reusable Bags and Limiting Use of Carryout Plastic Bags.

5.60.005 Purpose.

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.

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 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% 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.
- 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 thick or other non-plastic material such as machine washable cloth or woven synthetic fiber.
- K. **Undue hardship** means circumstances or situations unique to the particular retail establishment that results in no reasonable alternatives to the use of carryout plastic bags or which results in the inability to collect a recyclable paper bag or reusable plastic 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 a plastic carryout bag available to a customer.

5.60.020 Pass-Through Cost.

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 ten cents 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.

5.60.025 Exemptions.

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.

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 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.

5.60.035 Implementation and Enforcement.

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 Bend Code 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 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.