

## **ORDINANCE No.**

\* Amend Code to promote reusable checkout bags and reduce use of single-use plastic checkout bags (Ordinance; replace Code Chapter 17.103)

The City of Portland ordains:

Section 1. The Council finds:

1. In 2011, the City Council adopted Ordinance No. 184759 to promote reusable shopping bags and reduce use of single-use plastic checkout bags. As of October 15, 2011, select stores were required to provide only recycled paper bags or reusable checkout bags to customers.
2. Over the past year, a number of jurisdictions have adopted single-use checkout bag policies which include a more expansive range, or even all, retailers or food providers. Examples from cities on the West Coast include: Corvallis and Eugene, Oregon; San Francisco and Santa Cruz, California; and Seattle, Washington.
3. On October 10, 2012, City Council accepted Plastic Bag Ban One-Year Report (Report) brought forth by the Bureau of Planning and Sustainability (BPS). The report findings included:
  - Fewer than five consumer complaints regarding non-compliance
  - Reusable checkout bag use increased 304 percent
  - Highly recyclable paper checkout bag use increased 491 percent.
4. Portland City Council adopted Ordinance 184759 as a first step to promote the use of reusable checkout bags. The policy reduced single-use plastic shopping bag consumption, but this initial scope represents only a modest share of total single-use checkout bag use.
5. In adopting this ordinance, the Council intends to expand the range of regulated or affected businesses to include currently subject businesses and other retail and food establishments on a phased timeline.

NOW, THEREFORE, the Council directs:

- a. The City Code is amended by replacing Chapter 17.103, Single-Use Plastic Checkout Bags, attached as an exhibit to this ordinance, for existing Chapter 17.103. Chapter 17.103 under this Ordinance shall take effect on March 1, 2013 to allow the public and affected businesses time for any necessary transitions.
- b. After October 1, 2014, the Director of the Bureau of Planning and Sustainability shall return to Council with a report regarding the results of the enactment of this Ordinance and making recommendations as to any potential expansion of the program.

Section 2. The Council declares an emergency exists because the on-going use of single-use plastic shopping bags is harmful to the public health and welfare; therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Mayor Sam Adams

Prepared by: Megan Ponder

Date Prepared:

**LaVonne Griffin-Valade**

Auditor of the City of Portland

By

Deputy

## EXHIBIT “A”

### Chapter 17.103 Single-Use Plastic Checkout Bags

**17.103.010 Purpose.** The purpose of this Chapter is to regulate the distribution of plastic bags at retail and food establishments. The distribution of plastic bags has significant, on-going harmful impacts upon the environment, including

- A. Plastic bags are a major source of litter.
- B. When littered, the material is detrimental to wildlife that ingests it.
- C. The materials used in plastic bags are persistent in the environment.

**17.103.020 Definitions.** For purposes of Chapter 17.103, and any rules adopted thereunder, the following terms shall have the meanings specified in this Section.

A. **“Director”** means the Director of the Bureau of Planning and Sustainability, or his or her authorized representative, designee or agent.

B. **“Food provider”** means any person in the City that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.

C. **“Grocery store”** means any business in the City with gross annual receipts of \$2,000,000 or greater, offering for sale items of food and perishable items as well as other household goods and supplies.

D. **“Recycled paper bag”** means a paper checkout bag provided by a retail establishment or food provider to customers, meeting the following requirements:

1. Contains a minimum of 40 percent recycled content; and,
2. Is accepted for recycling in the City of Portland recycling program regulations under Chapter 17.102 of the City Code.

E. **“Reusable bag”** means a bag with handles that is specifically designed and manufactured for long-term multiple reuse and is

1. Made of cloth or other machine washable fabric; or
2. Made of durable plastic that is at least 4.0 mils thick.

F. **“Retail establishment”** means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization located within the City that sells or offers for sale goods to a customer.

G. **“Single-use plastic checkout bag”** means a plastic bag that is provided by a retail establishment or food provider to a customer and is not a reusable bag. A single-use checkout bag does not include either of the following:

1. A bag provided by a pharmacist to contain prescription medication purchased by

- customers of the pharmacy; or,
2. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag.

### **17.103.030 Authority of Director to Adopt Rules.**

A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.

B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, the Director shall conduct additional public review, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.
3. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within 5 business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
  - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
  - b. District Coalitions recognized by the City Office of Neighborhood Involvement,
  - c. Business District Associations identified by the City Office of Neighborhood Involvement; and,
  - d. Persons on the Bureau of Planning and Sustainability list of parties interested in administrative rules.

### **17.103.040 Checkout Bag Regulation.**

A. As of March 1, 2013, the following shall provide only recycled paper bags or reusable bags as checkout bags to customers:

1. Grocery stores; or,
2. Retail establishments or food providers with greater than 10,000 square feet in specific store size.

B. As of October 1, 2013, all retail establishments and food providers shall provide only recycled paper bags or reusable bags as checkout bags to customers:.

C. Violators of the requirements of Subsection 17.103.040 A shall be subject to penalties as set forth in Section 17.103.050.

### **17.103.050 Enforcement and Penalties.**

A. Any retail establishment or food provider that violates this Chapter shall be subject to:

1. Upon the first violation, the Director shall issue a written warning notice to the retail establishment or food provider that a violation has occurred.
2. Upon subsequent violations, the following penalties shall apply:
  - a. \$100 for the first violation after the written warning in a calendar year;
  - b. \$200 for the second violation in the same calendar year; and,
  - c. \$500 for any subsequent violation within the same calendar year.
3. No more than one penalty shall be imposed upon any single location of retail establishment or food provider within a 7-day period.

B. Upon making a determination that a violation of this code or regulations duly adopted pursuant to this Chapter 17.103 has occurred, the Director will send a written notice of the violation by mail to the retail establishment or restaurant specifying the violation and the applicable penalty as set forth in subsection A.

C. Any store receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Section 22.10.030.

**17.103.060 Severability.** If any Section, Subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this Chapter, and each Section, Subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional, and, if for any reason this Chapter should be declared invalid or unconstitutional, then the remaining Section, subsection, sentence, clause or phrases shall be in

full force and effect.