

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTER 15-6 TO PHASE IN REGULATION OF CARRYOUT BAGS WITHIN THE CITY LIMITS; PROVIDING EXEMPTIONS AND HARDSHIP VARIANCES; AND ESTABLISHING A TEMPORARY SURCHARGE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Council makes the following findings:

(1) The proliferation of single use carryout bags presents a unique and pernicious problem for Austin's citizens, environment, and wildlife.

(2) The successful reduction of single use carryout bags entering the City's solid waste stream, along with the integration of reusable bags and increase in recycling and composting, will help the city achieve its goal of "Zero Waste" by the year 2040.

(3) In 2007, City Council identified the issue of single use carryout bags by passing Resolution 20070419-026 directing the City Manager to evaluate and recommend strategies for limiting the use of non-compostable plastic bags, and promoting the use of compostable plastic bags, recyclable paper bags, and reusable checkout bags.

(4) In 2008, based on advice from a group including local grocers, retailers, plastic bag manufacturers, Keep Austin Beautiful, and city officials, City Council passed Resolution 20080410-048, adopting a plan to reduce by 50% the plastic bags entering the City's solid waste stream by June 2009. The plan established a voluntary program whereby retailers encouraged shoppers to reduce, reuse and recycle, made recycling bins available, and made reusable bags available at affordable prices.

(5) In 2010, The City Council passed Resolution 20100624-079 directing the City Manager to determine the cost to taxpayers of processing plastic bags in the waste stream.

(6) In 2011, City Council directed the City Manager to process an ordinance providing for the phase out of single use plastic bags after finding that the voluntary plan adopted in 2008 had reduced the use of plastic bags by approximately 20%.

PART 2. Chapter 15-6 (*Solid Waste Services*) of the City Code is amended to renumber Article 7 (*Enforcement and Penalties*) as Article 8 and add a new Article 7 to read:

Article 7. CARRYOUT BAGS

§ 15-6-121 DEFINITIONS.

In this article:

- (1) **BUSINESS ESTABLISHMENT** means any commercial enterprise, including sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.
- (2) **CARRYOUT BAG** means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases.
- (3) **REUSABLE CARRYOUT BAG** means a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:
 - (a) displays the phrase “Reusable and Recyclable” in a highly visible manner on the bag exterior;
 - (b) has a handle; and
 - (c) is constructed out of either:
 - (i) Cloth, other washable fabric, or other durable materials whether woven or non-woven;
 - (ii) Recyclable plastic, with a minimum thickness of 4.0 mil and containing only the types of plastic resin as prescribed by rule; or
 - (iii) Recyclable paper, with a minimum basis weight of 65 pounds and certified by the Sustainable Forestry Initiative or Forest Stewardship Council.

- (4) SINGLE-USE CARRYOUT BAG means a carryout bag that is not a reusable carryout bag.

§ 15-6-122 REGULATIONS

- (A) Beginning on the effective date of this ordinance, the City will engage in a public education campaign to inform business establishments and citizens of the requirements regarding carryout bags.
- (B) Beginning March 1, 2013, no person may provide single-use carryout bags at any City facility, City-sponsored event, or any event held on City property.
- (C) From March 1, 2013 through February 28, 2014, a business establishment within the City limits may not provide single-use carryout bags to its customers or to any person, except as provided in Section 15-6-124 (*Temporary Surcharge*).
- (D) Beginning March 1, 2014, a business establishment within the City limits may not provide single-use carryout bags to its customers or to any person.
- (E) Beginning March 1, 2013, a business establishment within the City limits must provide prominently displayed signage advising customers of the benefit of reducing, reusing and recycling and of the need to use reusable carryout bags. The language and placement of signs under this Section shall be as prescribed by rule.
- (F) A business establishment within the City limits may provide or sell reusable carryout bags to its customers or any person. A person may provide or sell reusable carryout bags at any City facility, City-sponsored event, or any event held on City property.

§ 15-6-124 TEMPORARY SURCHARGE

- (A) To facilitate a smooth transition to the requirements of this article, this section establishes a temporary surcharge which may be charged during a limited period of time as an option to reusable carryout bags.
- (B) From March 1, 2013 through February 28, 2014, a business establishment may provide single-use carryout bags to a customer only if the business establishment collects a surcharge authorized under this section; provided that the business

establishment may provide single-use carryout bags to a customer without collecting a surcharge if the customer is using the Texas Health and Human Services Commission issued Lone Star Card for payment.

(C) A business establishment subject to this article must choose between two surcharge calculation methods: 10 cents per bag or 1 dollar per transaction. The business establishment shall make its choice using forms and within the time frames prescribed by rule.

(D) The business establishment shall account for the surcharge collected and shall remit the surcharge to the City, less fifty percent. The accounting and remitting of the surcharge shall use forms and reporting cycles as prescribed by rule. The business establishment shall use the funds collected and retained under this section exclusively to offset the cost to administer the surcharge and to promote the use of reusable carryout bags.

(E) The city shall use the funds collected and remitted to it under this section exclusively to promote the use of reusable carryout bags.

§ 15-6-125 EXEMPTIONS

This article does not apply to:

- (1) Laundry dry cleaning bags, door-hangar bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
- (2) Bags provided to transport beer, wine, and spirits, only if the bags are recyclable within the City of Austin residential recycling program;
- (3) Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities, only if the bags are recyclable within the City of Austin residential recycling program;
- (4) Bags used by restaurants to take away prepared food, only if the bags are recyclable within the City of Austin residential recycling program; and
- (5) Bags used by a consumer inside a business establishment to:

- (a) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
- (b) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
- (c) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
- (d) Contain unwrapped prepared foods or bakery goods.

§ 15-6-126 HARDSHIP VARIANCE

- (A) The Director may grant a variance from a requirement of this article only after determining that:
 - (1) application of this article would cause undue hardship based upon unique circumstances, or
 - (2) application of this article would deprive a person or business enterprise of a legally protected right.
- (B) The request for variance shall be submitted on a form prescribed by rule.
- (C) A variance granted under this Section must be the minimum departure necessary to address the hardship.
- (D) The Director shall prepare written findings to support the grant or denial of a variance request under this Section.

PART 3. This ordinance takes effect on March 12, 2012.

PASSED AND APPROVED

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_____, 2012

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

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