

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 that provides carryout bags to its customers, 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 in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled, as prescribed by rule;
 - (b) except as provided in subsection (d) below, has a handle;
 - (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; and
 - (d) handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than 8 inches.

- 1
- 2 (4) SINGLE-USE CARRYOUT BAG means a carryout bag that is not a reusable
- 3 carryout bag.

4 **§ 15-6-122 REGULATIONS**

- 5 (A) Beginning on the effective date of this ordinance, the City will engage in a public
- 6 education campaign to inform business establishments and citizens of the
- 7 requirements regarding carryout bags.
- 8 (B) Beginning March 1, 2013, no person may provide single-use carryout bags at any
- 9 City facility, City-sponsored event, or any event held on City property.
- 10 (C) Beginning March 1, 2013, a business establishment within the City limits may not
- 11 provide single-use carryout bags to its customers or to any person.
- 12 (D) Beginning March 1, 2013, a business establishment within the City limits must
- 13 provide prominently displayed signage advising customers of the benefit of
- 14 reducing, reusing and recycling and of the need to use reusable carryout bags. The
- 15 language and placement of signs under this Section shall be as prescribed by rule.
- 16 (E) A business establishment within the City limits may provide or sell reusable
- 17 carryout bags to its customers or any person. A person may provide or sell reusable
- 18 carryout bags at any City facility, City-sponsored event, or any event held on City
- 19 property.

20 **§ 15-6-123 EXEMPTIONS**

21 This article does not apply to:

- 22 (1) Laundry dry cleaning bags, door-hangar bags, newspaper bags, or packages of
- 23 multiple bags intended for use as garbage, pet waste, or yard waste;
- 24 (2) Bags provided by pharmacists or veterinarians to contain prescription drugs or
- 25 other medical necessities, only if the bags are recyclable within the City of Austin
- 26 residential recycling program;

1 (3) Bags used by restaurants to take away prepared food, only if the bags are
2 recyclable within the City of Austin residential recycling program; and

3 (4) Bags used by a consumer inside a business establishment to:

4 (a) Contain bulk items, such as produce, nuts, grains, candy, or small hardware
5 items,

6 (b) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged,

7 (c) Contain or wrap flowers, potted plants or other items to prevent moisture
8 damage to other purchases, or

9 (d) Contain unwrapped prepared foods or bakery goods; and

10 (5) Bags used by a non-profit corporation or other hunger relief charity to distribute
11 food, grocery products, clothing, or other household items.

12 **§ 15-6-124 HARDSHIP VARIANCE**

13 (A) The Director may grant a variance from a requirement of this article only after
14 determining that:

15 (1) application of this article would cause undue hardship based upon unique
16 circumstances, or

17 (2) application of this article would deprive a person or business enterprise of a
18 legally protected right.

19 (B) The request for variance shall be submitted on a form prescribed by rule.

20 (C) A variance granted under this Section must be the minimum departure necessary to
21 address the hardship.

22 (D) The Director shall prepare written findings to support the grant or denial of a
23 variance request under this Section.

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

PASSED AND APPROVED

_____, 2012

§
§
§

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk



Single-Use Retail Carry-out Bag Regulations

Briefing 11/07/12

Bob Gedert, Director
Austin Resource Recovery
Bob.Gedert@AustinTexas.gov



Single-Use Retail Carry-out Bags

Austin City Council Ordinance

Adopted March 1, 2012

Rules Adoption Nov 8, 2012

Implementation Date March 1, 2013

Ordinance Purpose

Replaces Retail Carry-out Single-Use Bags
with defined Reusable Bags

“Regulation” – not “Ban”

Single-Use Retail Carry-out Bags

REUSABLE CARRY-OUT BAG STANDARDS

- Plastic Bags: minimum thickness of 4.0 mil
(alternative compliance offered if meets reuse test)
- Paper Bags: must contain a minimum of 40% recycled content beginning March 1, 2013, and minimum 80% recycled content by March 1, 2014.
- All reusable carry-out bags, whether plastic, paper, cloth or other fabric, must have consumer carrying handles.

Single-Use Retail Carry-out Bags

SIGNAGE AND RETAILER EDUCATION REQUIREMENTS

- Interior Signs posted within 6 feet of register
- Exterior Sign posted for each 50 parking spaces
- Signs must be displayed in English and Spanish
- Signs must be posted by March 1, 2013
- Retailer provided education to sales staff
- Retailer provided education to customers
- City provided education to general public

Single-Use Retail Carry-out Bags

EXEMPTIONS

- Exemptions offered within Adopted Ordinance
- Pharmaceutical, Veterinarian, and Restaurant must distribute paper bags – no other restrictions (by ordinance)
- Restaurants may use single-use plastic carryout bags only where necessary to prevent moisture damage (by rule)
- Exempted bags noted in Ordinance are not required to abide by other portions of Ordinance

Single-Use Retail Carry-out Bags

HARDSHIP VARIANCE

- Variances offered upon request and approval
- Variance Requests must demonstrate hardship and intent to comply with ordinance
- Primary purpose of hardship variance is extended time to implement required changes
- Maximum extended time to implement will be six months.

Single-Use Retail Carry-out Bags

ALTERNATIVE COMPLIANCE

Alternative Bags

- Alternative (substitute) plastic bags may be requested as alternative to the 4 mil standard
- Alternative bag must provide reusability and equivalent durability
- Alternative bag must meet minimum reuse testing standard of 100 reuses carrying 16 pounds with manufacturer or distributor documentation.

Single-Use Retail Carry-out Bags

ALTERNATIVE COMPLIANCE

Emergency Access

- An Emergency Access option was requested by Council in the adoption of the ordinance
- Alternative method of compliance through customer access to lower quality plastic bags
- Required full compliance to Ordinance within three year of implementation
- Must document need for Emergency Access

Single-Use Retail Carry-out Bags

ALTERNATIVE COMPLIANCE Criteria

- Director approval required in advance
- Full compliance within 3 years
- Control measures and reporting
- Signage requirements to clarify options
- Monthly reporting for bags distributed
- Application process outlined in section 10.10

Single-Use Retail Carry-out Bags

ENFORCEMENT

- 2013 – First Year – Education and Outreach, and Compliance Checks
- 2014 – Second Year – Compliance Checks, Notification of Non-Compliance, and Fines
- 2015 – Third Year – Fines – No Tolerance

Single-Use Retail Carry-out Bags

CITY RESPONSIBILITY

Retailer Notification

- Written notification to all businesses' affected

Public Education

- One year education and outreach campaign
- \$850,000 contract with marketing company
- Creative design, Paid media, Outreach
- Bag distribution – events and target areas
- Support of non-profit service agencies

Single-Use Retail Carry-out Bags

Next Steps

- City Council adoption of Rules (Nov 8, 2012)
- City notification to affected businesses
- Public Education and Outreach Campaign
- Full Implementation March 1, 2013

Single-Use Retail Carry-out Bags



**Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations**

Purpose;

By City Council adoption on March 1, 2012, Chapter 15-6 (*Solid Waste Services*) of the City Code was amended to renumber Article 7 (*Enforcement and Penalties*) as Article 8 and add a new Article 7 (*Carry-out Bags*). The purpose of the following Rules are to establish the framework for implementation, administration, and enforcement of the City Council resolution and ordinance to “phase in regulation of carry-out bags within the City limits.”

Administrative Rules

10.0 SINGLE-USE CARRY-OUT BAGS RULES

- 10.1 BACKGROUND AND SCOPE OF RULES
- 10.2 APPLICABILITY
- 10.3 GENERAL REQUIREMENTS
- 10.4 DEFINITIONS
- 10.5 REUSABLE CARRY-OUT BAG STANDARDS
- 10.6 SIGNAGE AND EDUCATION STANDARDS
- 10.7 EXEMPTIONS
- 10.8 HARDSHIP VARIANCE
- 10.9 ALTERNATIVE COMPLIANCE
- 10.10 PROCESS
- 10.11 DIRECTOR RULING
- 10.12 ORDINANCE ENFORCEMENT
- 10.13 REGULATION ADOPTION AND EFFECTIVE DATE

**Adoption of rules contingent upon City Council approval
in accordance with City Code Section 15-6-3(B).**

**Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations**

10.0 SINGLE-USE CARRY-OUT BAG RULES

10.1 BACKGROUND AND SCOPE OF RULES

- 10.1.1 On March 1, 2012, the Austin City Council unanimously approved amending Chapter 15-6 of the City Code to include Article 7 (*Carry-out Bags*) which regulates the types of bags Business Establishments may provide to their customers effective March 1, 2013.

10.2 APPLICABILITY

- 10.2.1 These rules specifically apply to Business Establishments (see Definitions section) located within the city limits of Austin, Texas.
- 10.2.2 The rules contained within this document are intended to specify the standards and expectations of Business Establishments that provide carry-out bags to their customers.
- 10.2.3 These rules do not apply to Charity Non-Profits, as defined in the Exemptions section.

10.3 GENERAL REQUIREMENTS. Effective March 1, 2013:

- 10.3.1 Affected Business Establishments may not provide single-use carry-out bags to its customers or any person or entity and shall display signage to educate their customers about their bag options.
- 10.3.2 No person may provide single-use carry-out bags at any City facility, City-sponsored event, or any event held on City property.
- 10.3.3 Affected Business Establishments may provide or sell reusable carry-out bags to its customers or any person.
- 10.3.4 The City of Austin shall not regulate the price of reusable carry-out bags.

10.4 DEFINITIONS. For the purpose of the Single-Use Carry-out Bag Rules, the following definitions shall apply:

- 10.4.1 **BUSINESS ESTABLISHMENT** means any commercial enterprise that provides carry-out bags to its customers, 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.
- 10.4.2 **CARRY-OUT BAG** means a bag provided by a Business Establishment to a customer typically at the point of sale for the purpose of transporting purchases.
- 10.4.3 **REUSABLE CARRY-OUT BAG** means a carryout bag that is specifically designed and manufactured for multiple reuse, meets the standards in 10.5 (*Reusable Carryout Bag Standards*) and is constructed of either:

Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations

10.4.3.1 Cloth, other washable fabric or other durable materials
whether woven or non-woven; or

10.4.3.2 Plastic with a minimum thickness of 4.0mm; or

10.4.3.3 Recyclable paper.

10.4.4 **SINGLE-USE CARRY-OUT BAG** means a carry-out bag that is not a reusable carry-out bag.

10.5 REUSABLE CARRY-OUT BAG STANDARDS. Reusable carry-out bags must meet the following criteria:

10.5.1 Plastic Bags: If made of plastic, be made of a minimum thickness of 4.0 mil;

10.5.2 Paper Bags: If made of paper, must contain a minimum of 40% recycled content beginning March 1, 2013, and contain a minimum 80% recycled content by March 1, 2014.

10.5.3 All reusable carry-out bags, whether plastic, paper, cloth or other fabric, must have consumer carrying handles.

10.5.4 Handles are not required for reusable paper carry-out bags with a height of less than 14 inches and width of less than 8 inches.

10.6 SIGNAGE AND EDUCATION REQUIREMENTS. Affected Business Establishments shall prominently display signs to educate customers regarding the city code requirements, the benefit of reducing, reusing and recycling, and the available reusable bag options offered. All required signs shall be displayed in both English and Spanish.

10.6.1 Affected Business Establishments shall provide prominently displayed signs educating its customers regarding carryout bags not later than March 1, 2013. The specific language may be chosen by the Business Establishment, provided that the signs shall include language explaining:

10.6.1.1 Under City Code, the Business Establishment no longer offers single-use carry-out bags, and

10.6.1.2 The options available for carrying out purchases from the Business Establishment.

10.6.2 Interior signs shall be posted by the Business Establishment no farther than six (6) feet from each point of sale.

10.6.3 Affected Business Establishments that own, lease, or control their customer parking areas shall post and maintain exterior signs with the following requirements:

10.6.3.1 Include language that reminds customers to bring their reusable bags; and

10.6.3.2 Exterior signs must be at least 11 inches by 17 inches in size, and readable by walking customers.

Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations

- 10.6.3.3 Be posted in the customer parking area so that it is visible to customers, with a minimum of one sign for every fifty (50) parking spaces.
 - 10.6.3.4 Business Establishments that contain less than 50 parking spaces shall post one exterior sign at the exterior customer entrance, visible to customers entering the Business Establishment.
- 10.6.4 The City will not supply the required signs. It is the sole responsibility of the affected Business Establishments to produce and erect the signs as required under City Code and these rules.
- 10.7 **EXEMPTIONS.** The following bag types are exempt from the single-use carry-out bag regulations:
 - 10.7.1 **LAUNDRY, NEWSPAPER, AND WASTE BAGS**, such as laundry dry cleaning bags, door-hangar bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste.
 - 10.7.2 **PHARMACEUTICAL AND VETERINARIAN BAGS**, limited to paper bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities.
 - 10.7.3 **RESTAURANT BAGS**, limited to recyclable paper bags used to take away prepared food. Single use plastic carryout bags allowed only where necessary to prevent moisture damage; examples include soups, sauces, salads with dressing, and liquids.
 - 10.7.4 **NON-CHECKOUT BAGS**, such as bags used by a customer inside a Business Establishment to:
 - 10.7.4.1 Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - 10.7.4.2 Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - 10.7.4.3 Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - 10.7.4.4 Contain unwrapped prepared foods or bakery goods.
 - 10.7.5 **CHARITY NON-PROFITS**, such as bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.
- 10.8 **HARDSHIP VARIANCE.**
 - 10.8.1 The Director may grant a variance from a requirement of Chapter 15-6 Article 7 (*Carry-out Bags*) only after determining that application of the regulations would:
 - 10.8.1.1 Cause undue hardship as demonstrated by the applicant; or
 - 10.8.1.2 Deprive a person or business enterprise of a legally protected right; and

**Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations**

10.8.1.3 The applicant provides documentation found sufficient by the Director to support the hardship variance.

10.8.2 The Director may grant additional time within which to fully comply with Chapter 15-6 Article 7 and these rules if the Director finds:

10.8.2.1 That compliance within the timeline established in City Code would cause undue hardship; and

10.8.2.2 The applicant provides documentation found sufficient by the Director to support granting additional time to comply.

10.9 ALTERNATIVE COMPLIANCE

10.9.1 ALTERNATIVE BAGS

10.9.1.1 The Director may approve a substitute carry-out bag if the Director finds that the proposed substitute bag meets the intent of the ordinance to promote reuse.

10.9.1.2 PLASTIC CARRY-OUT BAGS. The Director may approve an alternative to the required plastic reusable carry-out bag if the Director finds:

10.9.1.2.1 The proposed alternative bag provides reusability and durability that is equivalent to or better than the required bag;

10.9.1.2.2 The proposed alternative bag meets minimum reuse testing standard of 100 reuses carrying 16 pounds; and

10.9.1.2.3 Manufacturer or distributor documentation of the minimum reuse testing standards provided by the applicant is found sufficient by the Director to support use of the alternative bag.

10.9.2 EMERGENCY ACCESS. The Director may approve a method of alternative compliance proposed by the applicant to provide emergency access to carryout bags if the method proposed meets the criteria in 10.9.3, and the Director finds:

10.9.2.1 The applicant has demonstrated a need for an alternative method of compliance within the first three years of implementation;

10.9.2.2 The proposed alternative method meets the intent of City Council in adopting City Code Chapter 15-6, Article 7, including the elimination of single-use retail checkout bags;

10.9.2.3 Documentation of the findings provided by the applicant is found sufficient by the Director to support the alternative compliance method.

10.9.3 CRITERIA. Alternative compliance methods proposed under 10.9.2 must:

10.9.3.1 Be restricted to a time period not to exceed three (3) years, with an annual renewal request and evaluation;

10.9.3.2 Provide control measures and a corresponding reporting process to prevent continued consumer reliance on the alternative compliance;

10.9.3.3 Provide a smooth transition to full code compliance by the end of the alternative compliance time period;

**Austin Resource Recovery
Administrative Rules Implementing Chapter 15-6 – Article 7
Single Use Carryout Bags Regulations**

10.9.3.4 Provide signage to clarify consumer options; and

10.9.3.5 Include monthly reporting to the City regarding the effectiveness of the alternative method, including total alternative bags distributed.

10.10. PROCESS.

- 10.10.1 A request under 10.8 or 10.9 for a variance or alternative compliance shall use the form attached as **APPENDIX A** and contain at a minimum the following information:
 - A. The name and locations of the affected Business Establishment;
 - B. Applicant contact information;
 - C. The type of request (Alternative Compliance or Hardship);
 - D. If alternative compliance, the proposed alternative compliance method, and timeline requested; and
 - E. If hardship, description of the hardship and , demonstration that hardship is above and beyond general transition and conversion issues encountered by other retail establishments to honor the requirements of this ordinance.
- 10.10.2 A request for variance/alternative compliance must be presented to the Director no later than December 31, 2012 for existing Business Establishments for an effective date of March 1, 2013 if approved.
- 10.10.3 Variance requests submitted on or after January 1, 2013 will be reviewed on a case-by-case basis.
- 10.10.4 A variance granted by the Director must be the minimum departure necessary to address the hardship or unique circumstances.

10.11 DIRECTOR RULING.

- 10.11.1 The Director shall evaluate all requests on a case-by-case basis.
- 10.11.2 The Director shall render a decision on hardship variances and alternative compliance requests not later than 60 days after the request is submitted.
- 10.11.3 The Director shall prepare written findings to support the granting or denial of a variance request under this Section. The Director's written findings shall be available for public review upon request.

10.12 ORDINANCE ENFORCEMENT. The City will ensure compliance with the prohibition of distribution by Business Establishments of single-use carry-out bags through citizen complaints, onsite observations, and enforcement by City staff

10.13 REGULATION ADOPTION and EFFECTIVE DATE: The Austin City Council approved and adopted Ordinance 20120301-078, adding to City Code chapter 15-6 a new Article 7 entitled Carryout Bags on March 1, 2012. Ordinance 20120301-078 took effect on March 12, 2012, with full implementation of all requirements of this ordinance effective March 1, 2013.