



MEMORANDUM

To: Mayor and Council

CC: Marc A. Ott, City Manager
Robert D. Goode, Assistant City Manager

From: Bob Gedert, Director, Austin Resource Recovery

Date: January 26, 2012

Subject: **Single-Use Bag Ordinance Update**

Since Council approved Resolution 20110804-021 (August 4, 2011) requesting an ordinance regulating retail check-out bags, staff has been seeking and receiving a significant amount of public input. The purpose of this memo is to update Council on the public input process regarding development of a retail check-out single-use bag ordinance, provide a detailed analysis of the primary issues (including updated data regarding costs associated with single-use bags), and provide Council with next steps to consider an ordinance regulating single-use bags issued at check-out.

Summary

The primary focus in the ordinance development process is the phase out of single-use retail check-out plastic bags. As these retail check-out bags are utilized to carry bought products from the store to home, the goal has been to find appropriate replacement to the disposable bag. Thus, the proposed ordinance does not eliminate retail check-out bags. Instead, the ordinance regulates which types of bags are permissible for retail check-out, in replacement of single-use bags. Consumer choice of three types of reusable bags (cloth, recyclable plastic, recyclable paper) is defined in the ordinance, in replacement of the disposable single-use plastic bag.

Based on conversations with several cities that enacted ordinances regarding single-use plastic bags, the negative side-effect of banning plastic bags is the retailers' option to provide single-use paper bags as an alternative. Because these communities did not include any specific criteria as to what bags could be considered acceptable alternatives, the paper bags used by retailers were often sourced from tree stock rather than made of recycled content and were also thin and had limited future secondary use. To prevent this shift to another type of single-use bag, the draft ordinance includes a standard to provide paper bag alternatives that are thicker and can be reused many times without tearing, and are certified to be manufactured in an environmentally responsible manner.

Primary Concerns (detailed in the attached summary of issues):

Based on the stakeholder discussions to date, ten issues have evolved as primary concerns:

1. Unintended consequence: shifting to paper bags
2. Definitions of reusable bags
3. Plastic bag recycling programs
4. Exemptions
5. Fees
6. Variances
7. Transition timeline
8. Metrics to measure success
9. Plastic bag cost estimates
10. Contamination

Implementation Timeline

Based on stakeholder feedback, various timelines have been explored. Too short of transition is of concern to retailers as they require physical changes at the retail checkout, as well as exhausting the current purchased supply of single-use bags. Those concerned with the environmental impacts of single-use bags have noted that every day that passes has a negative impact on the environment. To respect the needs of the retailers and mediate the need for immediate action, the following transition timeline is offered in the proposed ordinance:

- Phase 1 – Public Education stage - March 1, 2012 to February 28, 2013: No restrictions to single use bag distribution for one year to allow for retailer change-over, consumer education, and in-store signage.
- Phase 2 – Transition stage - March 1, 2013 to February 28, 2014: Single-use bags may be distributed only if user fee is assessed, with retailers offering three reusable bag options.
- Phase 3 – Final stage - Beginning March 1, 2014: Single-use bags are prohibited from distribution, replaced by three reusable bag options.

Background - Council Process

Beginning in 2007, the Austin City Council began working with stakeholders to identify and implement ways to reduce consumption of single-use plastic bags issued at check out. On April 19, 2007, the City Council unanimously approved Resolution No. 20070419-026 directing the City Manager to evaluate and recommend strategies for limiting the use of non-compostable plastic bags by stores located in the City, and promoting the use of compostable plastic bags, recyclable paper bags, or reusable checkout bags.

On April 10, 2008, the City Council approved Resolution No. 20080410-048 adopting a voluntary plastic bag reduction plan in lieu of an ordinance banning plastic bags. The resolution also established a goal of reducing the number of plastic bags entering the waste stream by 50 percent within 18 months. The City worked with stakeholders to develop a plastic bag education campaign and pilot curbside recycling program. However, results did not reach their desired goals.

On August 4, 2011, the City Council approved Council Resolution No. 20110804-021 requesting “an ordinance providing a comprehensive phase-out of single-use plastic bags offered at retail check-outs within the city limits of Austin.” During the Council discussion, several members of Council requested consideration of including paper bags, as well as market drivers such as fees.

Public Input Process

Two group stakeholder meetings specifically focused on the issues involved regarding single-use plastic bags were held in September 2011 and were hosted by Mayor Leffingwell. From September through January, numerous individual stakeholder meetings were hosted by Bob Gedert and included local retailers, environmental organizations, bag manufacturers, bag distributors, citizens, and other interested parties. Several follow-up discussions were held with stakeholders at their request regarding their specific concerns.

The first public forum was conducted on October 24, 2011, followed by a series of opportunities for public input at Solid Waste Advisory Commission (SWAC) meetings in November, December and January. In addition, the Environmental Board received a briefing and public feedback on the single-use bag ordinance during their January 18, 2012 meeting. Environmental Board members voted to hold a committee meeting to discuss the issue further and present their suggestions for the full Environmental Board’s recommendation to Council.

Two more opportunities for public input are scheduled for Monday, January 30 followed by a SWAC meeting on February 8. Both meetings are open to the public. Citizens may continue submitting comments and suggestions to speakupaustin.org.

In addition to numerous meetings and phone conversations with key stakeholders and hundreds of comments submitted to the speakupaustin.org website, to date there have been six public meetings discussing the single-use bag ordinance. Of those six meetings, four were Solid Waste Advisory Commission (SWAC) meetings, one was a public forum, and one was an Environmental Board meeting. A total of three more meetings are scheduled to continue receiving public input.

On Monday, January 30, 2012, staff will conduct a moderated public forum to provide participants with opportunities to discuss draft ordinance language, ask questions and express opinions verbally and via polling. To ensure that all participants are working from the same foundation, staff will utilize the attached draft single-use bag ordinance. This draft is the third draft being presented to the public.

Council is scheduled to conduct a public hearing on Thursday, March 1, 2012 to discuss the single-use bag ordinance and possibly take action. The attached draft ordinance will serve as foundation for the Council discussion. At that time, staff will also present a summary of the public input as well as staff's final recommendations. Interested citizens and stakeholders can continue to submit their comments online at speakupaustin.org or attend one of the following meetings:

Next Public Forum: Monday, January 30, 2012, 6pm at City Hall
SWAC Meeting: Wednesday, February 8, 2012, 6:30 pm at City Hall
Council Public Hearing: Thursday, March 1, 2012, 4pm at City Hall

Council Action

Staff offers the attached proposed ordinance for Council discussion and consideration on March 1, 2012. Attachments: (1) Summary of Issues; and (2) Draft Single-Use Bag Ordinance

SUMMARY OF ISSUES: SINGLE-USE BAG ORDINANCE

The primary focus in the ordinance development process is the phase out of single-use retail check-out plastic bags. Since stakeholders stress the operational demand for a method to transport products purchased from the store to home, staff focused on developing an ordinance that regulates which types of bags are permissible. Thus, the proposed ordinance does not eliminate retail check-out bags. Instead, the ordinance regulates which types of bags are permissible for retail check-out, in replacement of single-use bags. This tactic helps focus consumer choice toward three types of reusable bags. Consumer choice of three types of reusable bags is defined in the ordinance.

Based on the stakeholder discussions to date, ten issues have evolved as primary issues of concern:

1. Unintended consequence: shifting to paper bags
2. Definitions of reusable bags
3. Plastic bag recycling programs
4. Exemptions
5. Fees
6. Variances
7. Transition timeline
8. Metrics to measure success
9. Plastic bag cost estimates
10. Contamination

Unintended consequences: Shifting to paper bags

Based on conversations with several cities that enacted ordinances regarding single-use plastic bags, the negative side-effect of banning plastic bags is the retailers' option to provide single-use paper bags as an alternative. Because these communities did not include any specific criteria as to what bags could be considered acceptable alternatives, the paper bags used by retailers were often sourced from tree stock rather than made of recycled content and were also thin and had limited future secondary use. To prevent this shift to another type of single-use bag, although not being included in the Council approved resolution, the draft ordinance includes a standard to provide paper bag alternatives that (1) are thicker and can be reused many times without tearing, and (2) are certified to be manufactured in an environmentally responsible manner.

Definitions: Single-use bags and Reusable bags

The proposed ordinance prohibits the distribution of single-use carryout bags, regardless if they are paper or plastic. Only "reusable carryout bags" are permitted for distribution in the City of Austin limits. Reusable carryout bags include and are defined as:

- Cloth, other washable fabric, or other durable materials whether woven or non-woven;
- Recyclable plastic, with a minimum thickness of 4.0 mil and containing only the types of plastic resin as prescribed by rule;
- Recyclable paper, with a minimum basis weight of 65 pounds and certified by the Sustainable Forestry Initiative or Forest Stewardship Council.

Through these three bag options, the proposed ordinance does not ban retailer bag distribution, but rather regulates the types of bags distributed to encourage extended reuse and recyclability. The working definition of a reusable bag is that the material construction of the bag can offer at least ten reuses. Thus, plastic and paper bags were defined with minimum standards for durability.

Recycling Programs

Twelve retailers have offered recycling collection containers at their retail stores in Austin for the collection of single-use retail plastic bags. These bags are collected for recycling and shipped to various end-users, primarily to produce recycled plastic lumber. By eliminating single-use bags from distribution, there is a concern that the transition will limit recycling opportunities.

The reusable paper bags, as defined in the proposed ordinance, are recyclable in the Austin residential single-stream recycling program. After an extended life through multiple reuses, the paper bags can be

placed in the City's recycling cart. Local recycling processors have ready recycling markets for paper bags.

The reusable plastic bags, as defined in the proposed ordinance, are recyclable and of higher recycling value than the single-use plastic bags. Recycling markets are willing to pay a higher dollar value than single-use plastic bags. As there are ready markets for this higher grade of plastic bags, I am researching available collection methods that are convenient to consumers. This could involve an expansion of retailer collection sites, as well local recycler collection support. I will present recycling options on March 1st when the proposed ordinance is scheduled for Council consideration.

In addition, a local organization has initiated a business planning process to produce reusable bags in Austin, which may result in a new local bag distribution option for retailers and consumers. There are additional significant economic development opportunities to pursue based on the specifications of the reusable bags in the proposed ordinance.

Exemptions

Since the Council resolution pertains to single-use bags distributed at the retail checkout counter, numerous plastic bag exemptions are offered in the proposed ordinance for clarification. These exemptions are commonly found in other cities with similar ordinances and include:

- Dry Cleaner Bags
- Yard Waste Bags
- Produce, Meat, and Frozen Foods Bags
- Door-hanger Bags
- Newspaper Bags
- Prescription Drug Carry-out Bags
- Beer, Wine and Spirits Carry-out Bags
- Restaurant Carry-out Bags

These exemptions represent situations where reusable bags are not a reasonable option based on distribution or site conditions. For example, produce, meat and frozen foods require bags that can contain liquids and must avoid contact with other foods. These exemptions represent a small percentage of all plastic bags distributed.

Fees

Stakeholders discussed the use of fees as a market driver to reduce the dependence on single-use bags toward the goal of eliminating their use all together. The proposed ordinance provides the business establishment the option of providing single-use bags in exchange for a fee for a period of one year, as a means to transition consumers from single-use bags to reusable bags. Half of the collected fees would be retained by the retailer to be used specifically for consumer education and reusable bag distribution. The proposed ordinance assigns the remaining 50% of the fees to the City, with the same use restrictions. The City would deposit these funds into a restricted use fund for the sole purpose of promoting reusable bag use through public education and reusable bag distribution.

The proposed ordinance offers two choices to the retailer: 10 cents per bag or 1 dollar per transaction. The ordinance requires business establishments subject to the ordinance to choose between the two surcharge calculation methods. In the stakeholder discussions, retailers that commonly sold a few items to each customer (e.g. convenience stores) tended to prefer the per bag fee, while retailers that commonly sold many items per customer (e.g. grocers) tended to prefer the per transaction fee.

Hardship Variance

Recognizing concerns that the single-use bag ordinance would disproportionately impact citizens in economic hardship, the proposed ordinance offers an exemption of bag fees to customers with the Lone Star Card. In addition, the City use of the fees collected will be utilized to purchase and distribute reusable bags to low income residents. The draft ordinance grants the Director with authority to issue hardship variance to retailers upon demonstration of a specific hardship.

Transition Timelines

Based on stakeholder feedback, various timelines have been explored through the discussions of draft 1 and draft 2 of the single-use bag ordinance. Too short of transition is of concern to retailers as they require physical changes at the retail checkout, as well as exhausting the current purchased supply of single-use bags. Those concerned with the environmental impacts of single-use bags have noted that every day that passes has a negative impact on the environment. To respect the needs of the retailers and mediate the need for immediate action, the following transition timeline is offered in the proposed ordinance:

- Phase 1 – Public Education stage - March 1, 2012 to February 28, 2013: No restrictions to single use bag distribution for one year to allow for retailer change-over, consumer education, and in-store signage.
- Phase 2 – Transition stage - March 1, 2013 to February 28, 2014: Single-use bags may be distributed only if user fee is assessed, with retailers offering three reusable bag options.
- Phase 3 – Final stage - Beginning March 1, 2014: Single-use bags are prohibited from distribution, replaced by three reusable bag options.

The proposed ordinance also prohibits the distribution of single-use bags at any City facility, City-sponsored event, or any event held on City right-of-way property.

Education Requirements

To change consumer behavior through the transition period, the proposed ordinance requires retailer signage and education at the point of purchase. The City will offer reusable bags to residents during the two-year transition (March 2012 – March 2014), engage in a public education campaign, and provide consumer information on its website. The responsibility to educate the public is a shared responsibility of retailers and the City, and funded through the collection of fees during the one-year transition period.

Metrics

In the research of this issue, it has been very difficult to track the amount of bags distributed within Austin, as well as the percentage recycled through the retailer collection system offered through twelve retailers. Local retailers have offered no metrics regarding existing efforts to recycle disposable bags. A local survey notes that 85% of Austin residents reuse retail checkout bags – yet that statistic does not offer the percentage of bags distributed that are reused for secondary use. Anecdotal observations indicate that less than 10% of bags acquired by an average family are physically reused for trash can liners, animal waste clean-up, and other reuses. Typically, the remaining plastic bags are discarded in the trash. In addition, most reuse is limited due to the thin wall of the plastic bags. EPA estimates that 9.4% of plastic bags are recycled (USEPA, 2009).

To achieve Zero Waste, it is important to increase recycling options for the eventual end-of-life of reusable bags. Any replacement of single-use bags must increase recycling opportunities and the percentage of distributed bags recycled. The proposed ordinance requires all paper and plastic bags distributed through retail check-outs to be recyclable. In addition, the draft ordinance requires

pharmacy and restaurant bags (generally exempted from the ordinance) to be recyclable. The reuse and recycling goals of the proposed ordinance are:

- 100% reduction in retail single-use bag distribution from ordinance adoption to March 1, 2014,
- 100% of retail check-out bags distributed are reusable by March 1, 2014, and
- Significant increase in number of sites available to consumers to recycle plastic bags.

Clarification: Jan 2011 Staff's cost estimates regarding plastic bags

Staff's January 12, 2011 analysis of costs related to single-use bags utilized an assumption that single-use plastic bags compose 2.2% of all litter based on a study commissioned by Keep America Beautiful (KAB). Recently, Steve Stein, the project manager, who oversaw the KAB study contacted staff by email and explained that staff should have relied on another more precise figure of 0.6% in its analysis of single-use plastic bags in litter.

Staff contacted Mr. Stein directly and found that the 0.6% data he referenced was data that had not specifically been included in the report. He clarified that the public would not have had access to this specific data without contacting him directly.

Using data from both KAB's study as well as data from the Environmental Protection Agency (EPA), staff reevaluated the cost estimates. Staff applied the following:

1. Using the basis that the KAB Study results can be applied to Austin, plastic bags compose 0.6% of litter collected from litter abatement activities;
2. Using the basis that data from the EPA 2010 *Municipal Solid Waste Generation, Recycling and Disposal in the United States* report can be applied to Austin, "plastic bags, sacks, and wraps" compose approximately 2.1% of municipal solid waste.
3. Because the EPA data also provides types of plastic bags based on their resin codes, Mr. Stein suggests that it may be possible to extrapolate the estimated percentage of single-use plastic bags. Using the basis that most HDPE bags are retail bags and few LDPE bags are retail bags, Mr. Stein calculated that single-use plastic bags compose approximately 0.4% of municipal solid waste.

Mr. Stein stressed that plastic bags in the national litter survey included single-use checkout bags, trash bags, dry cleaner bags, and other types of plastic bags. While EPA's report broke down plastic bags by resin type, data specifying which bags were single-use "t-shirt" plastic bags was not provided. Neither the City, Mr. Stein, nor EPA are aware of reports that clearly separate single-use "t-shirt" plastic bags from all other types of plastic bags. Therefore, even the data provided in both reports is not exact. To ensure complete transparency, staff offers the following cost range estimates:

UPDATED COST ESTIMATES FOR MANAGEMENT OF PLASTIC BAGS	ESTIMATED Annual Costs to Manage Plastic Bag Waste
ESTIMATED cost to the community at large	\$331,000 - \$804,000
▪ <i>Trash Collection and Disposal (using 0.4% to 2.1%)</i>	<i>\$111,000 - \$581,000</i>
▪ <i>Litter Cleanup and Street Sweeping (using 0.6%)</i>	<i>\$35,000</i>
▪ <i>Landfill Litter Cleanup (using 0.6% to 2.1%)</i>	<i>\$1,000 - \$4,000</i>
▪ <i>Recycling Contamination, Machinery Costs and Revenue</i>	<i>\$184,000</i>

It is essential to remember that the environmental impact of plastic bags cannot be quantified at this time. Environmental factors to consider include but are not limited to direct impact to wildlife, wildlife habitat, water quality, storm water systems, etc. These are factors that are essential to the policy

discussion, are held as strong values by Austinites, and contribute to the City's vision of being the most livable city in the country.

In Austin alone, 14 organizations have expressed various concerns regarding the continued dependence on single-use plastic bags. Those concerns are echoed by the City's own Watershed Protection Department which stated:

"Single-use plastic bags directly impact the Watershed Protection Department's mission to protect and improve Austin's waterways for the use and enjoyment of our citizens and to support sensitive aquatic ecosystems. These bags are lightweight and are easily carried into the City's storm water drainage system during storm events. They are often found to be blocking the proper flow of storm water throughout the network of inlets, pipelines, management facilities and open waterways. The bags are most typically observed by the public in our local waterways, often caught within the vegetation along creek banks and the shoreline of Lady Bird Lake. This not only diminishes the aesthetic value of these natural areas but also poses a direct hazard to wildlife such as wading birds, ducks and turtles that may become entangled in the bags or ingest the material. Because of the longevity of the plastic, these bags can persist in the environment and continue to be problematic for many years."

Bag Contamination Concerns

A June 9, 2010 University of Arizona report funded by the American Chemistry Council, evaluated cross-contamination risks in reusable bags. A total of 84 bags were collected (25 from Los Angeles, 25 from San Francisco and 34 from Tucson) for the study. Eighty (80) bags were woven polypropylene (PP plastic), while four bags were woven cotton bags. The study indicates that at least 12% of the samples carried a form of e-coli bacteria. The results of this study have not been duplicated in any other bag contamination study.

The primary bag type in this study consisted of woven polypropylene (PP) plastic bags. This type of plastic bag has restricted recycling markets as compared to polyethylene (HDPE, LDPE) plastic bags. It is possible to specify plastic bag distribution to focus on the more recyclable polyethylene resin types and avoid the polypropylene bags.

Additionally, researchers noted an important observation: "Machine or hand washing even without the presence of bleach was effective in reducing coliform and other bacteria in the bags to levels below detection." The report indicated that "hand or machine washing reduced the numbers of bacteria in reusable bags by >99.9%." Further, since the proposed ordinance exempts produce, meat, and frozen foods bags, contamination should be minimal. These types of foods are the primary sources of bacteria cross-contamination.

To minimize bacterial contamination, researchers offered a practical solution to this concern: "It is recommended that the public needs to be educated about the proper care of reusable bags by printed instructions on the bags or through public service announcements."

Additional issues and concerns can be addressed by staff as requested.

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%.

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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.

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

3 **§ 15-6-122 REGULATIONS**

4 (A) Beginning on the effective date of this ordinance, the City will engage in a public
5 education campaign to inform business establishments and citizens of the
6 requirements regarding carryout bags.

7 (B) Beginning March 1, 2013, no person may provide single-use carryout bags at any
8 City facility, City-sponsored event, or any event held on City property.

9 (C) From March 1, 2013 through February 28, 2014, a business establishment within
10 the City limits may not provide single-use carryout bags to its customers or to any
11 person, except as provided in Section 15-6-124 (*Temporary Surcharge*).

12 (D) Beginning March 1, 2014, a business establishment within the City limits may not
13 provide single-use carryout bags to its customers or to any person.

14 (E) Beginning March 1, 2013, a business establishment within the City limits must
15 provide prominently displayed signage advising customers of the benefit of
16 reducing, reusing and recycling and of the need to use reusable carryout bags. The
17 language and placement of signs under this Section shall be as prescribed by rule.

18 (F) A business establishment within the City limits may provide or sell reusable
19 carryout bags to its customers or any person. A person may provide or sell reusable
20 carryout bags at any City facility, City-sponsored event, or any event held on City
21 property.

22 **§ 15-6-124 TEMPORARY SURCHARGE**

23 (A) To facilitate a smooth transition to the requirements of this article, this section
24 establishes a temporary surcharge which may be charged during a limited period of
25 time as an option to reusable carryout bags.

26 (B) From March 1, 2013 through February 28, 2014, a business establishment may
27 provide single-use carryout bags to a customer only if the business establishment

1 collects a surcharge authorized under this section; provided that the business
2 establishment may provide single-use carryout bags to a customer without
3 collecting a surcharge if the customer is using the Texas Health and Human
4 Services Commission issued Lone Star Card for payment.

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

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

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

17 **§ 15-6-125 EXEMPTIONS**

18 This article does not apply to:

- 19 (1) Laundry dry cleaning bags, door-hangar bags, newspaper bags, or packages of
20 multiple bags intended for use as garbage, pet waste, or yard waste;
- 21 (2) Bags provided to transport beer, wine, and spirits, only if the bags are recyclable
22 within the City of Austin residential recycling program;
- 23 (3) Bags provided by pharmacists or veterinarians to contain prescription drugs or
24 other medical necessities, only if the bags are recyclable within the City of Austin
25 residential recycling program;
- 26 (4) Bags used by restaurants to take away prepared food, only if the bags are
27 recyclable within the City of Austin residential recycling program; and

1 (5) Bags used by a consumer inside a business establishment to:

2 (a) Contain bulk items, such as produce, nuts, grains, candy, or small hardware
3 items;

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

5 (c) Contain or wrap flowers, potted plants or other items to prevent moisture
6 damage to other purchases; or

7 (d) Contain unwrapped prepared foods or bakery goods.

8 **§ 15-6-126 HARDSHIP VARIANCE**

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

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

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

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

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

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

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21 **PART 3.** This ordinance takes effect on March 12, 2012.
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PASSED AND APPROVED

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_____, 2012

Lee Leffingwell
Mayor

APPROVED: _____

ATTEST: _____

Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

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