

ORDINANCE No.

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

The City of Portland ordains:

Section 1. The Council finds:

1. Since 1990, Portland has restricted the use of polystyrene foam (PSF) containers for commercially prepared food. Portland City Code (PCC) 17.102.300 through PCC 17.102.340. In adopting the code provisions, the Council cited the following concerns:
 - Foam products are not biodegradable.
 - The nature of the material makes it a major contributor to litter.
 - When littered, the material is detrimental to wildlife that ingests it.
 - Recycling of PSF containers is not practical.
2. Subsequent to the Council's adoption of the PSF container regulations, the Oregon Court of Appeals upheld the ordinance, concluding that the City's decision to eliminate waste by prohibiting the use of PSF was not inconsistent with state policy of recycling solid waste. Denton Plastics, Inc. v. City of Portland, 105 Or App 302 (1991)
3. In 1994, the Council adopted Resolution No. 35338, Sustainable City Principles, accepting the City's responsibility to:
 - Support a stable, diverse and equitable economy
 - Protect the quality of the air, water, land and other natural resources
 - Conserve native vegetation, fish, wildlife habitat and other ecosystems
 - Minimize human impacts on local and worldwide ecosystems.
4. In 2006, City Council adopted the Watershed Management Plan. Resolution No. 36384. The Plan establishes watershed health goals including protecting and improving surface water and groundwater quality to protect public health and support native fish and wildlife populations and biological communities. Plastic bags fragment into increasingly smaller particles but never completely disappear, persisting in ecosystems for decades and degrading watershed health. Plastic pollution is a hazard for wildlife populations and negatively affects surface water and groundwater quality in Portland watersheds, making it more difficult to achieve the goals of the Watershed Management Plan.
5. In 2006, the Council adopted Resolution No. 36423 establishing goals for the City's solid waste and recycling system. These goals included:
 - Promoting sustainability of the solid waste and recycling system that includes maximum efficiency, equity and economic vitality, improved worker safety and reduced environmental and human health impacts over the entire life cycle of the materials.
 - Minimizing the impact of harmful wastes by targeting toxicity.
 - Reducing *per capita* waste generation below 2005 levels by the year 2015.
 - Increasing recovery of all waste with a target of 75 percent by the year 2015 and

promote highest value use of the recovered materials.

6. In 2009, the Council adopted the City's Climate Action Plan. Resolution No. 36748. The City's 2030 goals under the Action Plan include the following:
 - Reducing total solid waste generated by 25 percent.
 - Recovering 90 percent of all waste generated.
7. Plastic shopping bags have significant environmental impacts each year, including the use of over 12 million barrels of oil for bag production in the United States. Nationwide, the Environmental Protection Agency estimates that only 9.4% of plastic bags, sacks and wraps are recovered from the solid waste stream. Oregonians use an estimated 1.7 billion single use plastic bags each year. The extensive usage of single-use plastic shopping bags and their typical disposal creates an impediment to the City's waste reduction and recycling goals. Although some facilities in Portland recycle plastic bags, the Department of Environmental Quality (DEQ) estimates the recycling rate is 11 percent, with much of that commercially generated plastic film (e.g., shrink wrap). The actual recycling rate for single-use plastic shopping bags is significantly lower. According to the DEQ, residential recycling of plastic bags would substantially increase sorting costs, rendering this effort cost prohibitive. The economics of recycling plastic bags are only logical for large commercial volumes such as those generated by warehouses, not for single-use plastic shopping bags. Many of the plastic shopping bags end up in landfills. A significant number are "unaccounted for" — lost into the environment, washed into streams and rivers and ultimately the oceans.
8. Plastic bags are not accepted in Portland's residential curbside recycling collection program. Even so, bags are mistakenly placed into the recovery stream and cause significant problems for local material recovery facilities (MRFs). At the MRFs, plastic bags clog the sorting equipment. Removal of the bags costs time and money, reducing the efficiency of the recycling system. Far West Fibers, which handles a significant amount of the recycling from the Portland metropolitan region, estimates that 25 to 30 percent of total labor costs are spent on shutting down the recycling machinery and manually removing the jammed plastic bags and film. Far West Fibers has indicated that this process is the primary contributing cause of job-related injuries. Other estimates identify that plastic bags cost local MRFs between \$30,000 and \$40,000 every month. In addition to clogging the equipment, the shopping bags often contaminate recovered materials (e.g., paper bales), reducing the quality and market value of the materials. Finally, because plastic bags are extremely lightweight, flyaway bags litter parks and enter storm drains. At MRFs, transfer stations, and landfills blowing bags require special efforts, such as fences and cleanup crews, to prevent the bags from blighting neighboring properties.
9. Governments in several countries have banned or discouraged the use of plastic bags. Ireland has achieved a 90% decrease in shopping bag use. China has banned plastic bags since 2008. In 2011, Italy banned single use plastic shopping bags. In 2007, San Francisco became the first American city to adopt a ban on plastic shopping bags. Since then, other cities such as Malibu, Long Beach, Oakland, San Jose, Santa Monica and Palo Alto, California; Westport, Connecticut; Telluride, Colorado; Bellingham and Edmonds, Washington; and Brownsville, Texas have followed suit by adopting plastic bag regulations. The Los Angeles County Board of Supervisor's adopted a plastic bag ban that

went into effect on July 1, 2011. San Francisco's regulations have helped to eliminate the dissemination of plastic checkout bags at a number of stores with national operations, including Walgreens, Rite Aid, Safeway, Kroger and affiliated corporations.

10. In 2010, the City Council adopted Resolution No. 36804, acknowledging that members of the Oregon State Legislature would be undertaking efforts in the 2011 legislative session to regulate single-use plastic shopping bags. The 2011 legislative session concluded without passing legislation in this area.
11. The City, through the Bureau of Planning and Sustainability, encourages the use of reusable bags instead of accepting single-use bags at stores. Since 2007, the City has distributed more than 35,000 durable, reusable bags to Portland residents. The Bureau of Planning and Sustainability (BPS) will continue to distribute reusable bags and "bring-your-own-bag" reminders throughout Portland, with a focus on working with service providers that assist seniors and low-income households. Within this focus, BPS shall, in response to household requests, provide up to one reusable bag per person in households confirmed as receiving the City's low-income discount for water and sewer services. BPS shall also conduct an outreach campaign to notify potentially affected businesses of the City Code amendment, offering guidance and direction on compliance.
12. It is in the public interest to restrict the proliferation of single-use plastic shopping bags. In the absence of statewide regulation, the Council finds it necessary to enact these regulations within the City of Portland.

NOW, THEREFORE, the Council directs:

- a. The City Code is amended by adding a new Chapter 17.103, **Single-Use Plastic Checkout Bags**, attached as an exhibit to this ordinance. Chapter 17.103 shall be in effect on and after October 15, 2011 to allow the public and affected businesses time for the necessary transition.
- b. Within one year after the effective date of this ordinance, 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 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: MArmstrong/BWalters

Date Prepared: July 13, 2011

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 prohibit stores from distributing single-use plastic checkout bags to their customers, to encourage the distribution and use of reusable bags, and to permit stores to sell to consumers recycled or compostable bags for checkout use.

17.103.020 Definitions. For purposes of Chapter 17.103, and any rules adopted thereunder, the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have meanings commonly accepted in the community.

A. “**Compostable plastic bag**” means a bag that is qualified as acceptable in the City of Portland’s composting program.

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

C. “**Recycled paper bag**” means a paper checkout bag provided by a store to customers, meeting the following requirements:

1. Contains a minimum of 40 percent postconsumer recycled content; and,
2. Is accepted for recycling in the City of Portland recycling program.

D. “**Reusable bag**” means a bag with handles that is specifically designed and manufactured for multiple reuse, being capable of carrying 22 or more pounds over a distance of at least 175 feet, and is either:

1. Made of cloth or other machine washable fabric, or
2. Made of durable plastic that is at least 2.25 mils thick.

E. “**Single-use plastic checkout bag**” means a plastic bag that is provided by a store 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.

F. “**Store**” means a retail establishment that

1. Is a full-line, self-service retail store with gross annual sales of \$2,000,000 (\$2 million), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items; or
2. Has over 10,000 square feet of retail space that generates sales and has a pharmacy as defined in ORS 689.005 and which is subject to the rules of the State Board of Pharmacy.

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 ten nor more than thirty 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 as 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 five 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.

C. The Director may waive the application of Section 17.03.050 for any particular store for a period up to March 1, 2012 to allow for the orderly draw down of an existing inventory of single-use plastic checkout bags. Any store requesting a waiver shall apply to the Director using forms provided by the bureau, and shall allow the Director access to all information supporting its

application. Any store receiving a waiver shall file monthly reports on inventory reduction and remaining stocks.

17.103.040 Checkout Bag Regulation.

A. Stores shall provide only the following as checkout bags to customers: recycled paper bags, compostable plastic bags, or reusable bags.

B. Violation of the requirements of Subsection 17.103.040 A shall subject a Store to penalties as set forth in Section 17.103.050.

17.103.050 Enforcement and Penalties.

A. Any store that violates this Chapter shall be subject to:

1. Upon the first violation, the Director shall issue a written warning notice to the store 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 a store within a 7-day period.

B. The Director of the Bureau of Planning and Sustainability, upon determination that a violation of this code or regulations duly adopted pursuant to this code has occurred, will send a written notice of the violation by mail to the store which will specify the violation and appropriate penalty.

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 pursuant to Chapter 22.10 for a hearing within 30 days of receipt of the notice.

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.