

ORDINANCE O-13-14

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING CHAPTER 9, HEALTH AND SANITATION, OF THE CITY CODE OF THE CITY OF BISBEE, BY THE AMENDMENT OF ARTICLE 9.7, REGULATION OF CARRYOUT BAGS, AND PROVIDING FOR REPEAL AND SEVERABILITY.

WHEREAS, the widespread use of disposable carryout bags results in a significant amount of waste material, creates additional burdens upon the City's solid waste collection system, and increases the sanitation costs for the City and its residents; and

WHEREAS, plastic carryout bags in particular result in a significant amount of wind-blown litter, resulting in visual blight and adverse impacts upon our desert environment; and

WHEREAS, the production and delivery of disposable carryout bags consumes a significant amount of both renewable and non-renewable resources to provide what is essentially waste material; and

WHEREAS, the City's actions to reduce the amount of waste material produced for and used by this community are consistent with the goals and objectives of the U. S. Mayors' Climate Protection Agreement, as previously adopted by the City of Bisbee; and

WHEREAS, numerous other jurisdictions have demonstrated that a small fee upon the use of disposable carryout bags in order to reduce their usage has been an effective mechanism to encourage the increased use of reusable carry out bags; and

WHEREAS, these amendments are in the best interests of the City and its citizens and are within the authority granted to the Mayor and Council by Sections 1.03 and 6.02 of the City Charter of the City of Bisbee,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Bisbee as follows:

Section 1: That Chapter 9, Health and Sanitation, of the City Code of the City of Bisbee, is hereby amended by the substitution and addition of Article 9.7, Regulation of Carryout Bags, as specified in the attached Exhibit A, incorporated herein by reference.

Section 2: Repeal. That Ordinance O-11-12, previously adopting a prior version of Article 9.7, Regulation of Disposable Carryout Bags, is hereby repealed in its

entirety, together with the previously approved version of Article 9.7 of the City Code of the City of Bisbee.

Section 2: Severability. That if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee, this ____ day of _____, 2013.

APPROVED:

Adriana Z. Badal, Mayor

ATTEST:

Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

John A. MacKinnon, City Attorney

EXHIBIT A

AMENDMENT TO CHAPTER 9 OF THE CITY CODE, HEALTH AND SANITATION; AND CEMETERY

[New Article]

ARTICLE 9.7 REGULATION OF CARRYOUT BAGS

9.7.1 Findings and Purpose

The Mayor and Council of the City of Bisbee hereby find that:

- A. The widespread practice by retail stores of supplying disposable carryout bags to their customers results in a significant amount of waste material and creates additional burdens on the City's solid waste collection system, resulting in more costs to the City and its citizens.
- B. Plastic carryout bags in particular result in a significant amount of wind-blown litter throughout our high desert landscape, resulting in visual blight and adverse impacts upon this environment. The fact that these plastic bags do not decompose, but only break down into smaller particles, results in the potential for their chemical components to be ingested or taken up by other organisms, with potentially harmful effects to the natural environment.
- C. Carryout bags that are not properly disposed of can result in clogged sewer lines and otherwise adversely impact the City's sanitary sewer systems and give rise to costly repairs and maintenance of public infrastructure.
- D. The production and delivery of disposable carryout bags consumes a large amount of both renewable and non-renewable resources on an annual basis, and even though these account for only a small percentage of our total national use of oil and natural gas, this usage still constitutes a significant amount of total energy expended on what is essentially waste material.
- E. The amount of waste material being produced, the amount of energy being consumed, and the amount of litter in our local environment will all be reduced if the use of disposable carryout bags in our community is reduced and the use of reusable carryout bags is encouraged.
- F. This action to reduce the amount of energy that is expended by and for this community and to decrease the amount of waste material produced in this community is consistent with goals and objectives of the U. S. Mayor's Climate Protection Agreement that has been previously approved the City of Bisbee.
- G. Other communities have found that the adoption of a relatively small fee for the use of certain types of disposable carryout bags has significantly

reduced the usage of such bags and encouraged the use of reusable carryout bags.

- J. The implementation of any such regulation will be more likely to be successful if there is sufficient lead time prior to the effective date and this regulation is implemented in phases.

9.7.2 Definitions

- A. **“Exempt single-use bags”** include bags made available to consumers inside stores, prior to their arrival at the checkout counter, to be used to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; to be used to contain or wrap frozen or fresh foods, meat or fish, whether prepackaged or not; to be used to separate flowers or potted plants, or other damp items that may need to be separated from other purchases; to be used to protect or separate prepared foods or bakery goods; to be used by pharmacists to contain prescription drugs; newspaper bags; clothing bags provided by dry cleaners; bags to be used to protect a purchased item from damaging or contaminating other purchased items, when placed in a reusable carryout bag or recycled paper bag; and bags sold in packages containing multiple bags and intended for use outside of the store to contain garbage, pet waste, yard waste or other materials.
- B. **“Recycled paper bag”** means a paper carryout bag provided by a retail establishment to a customer at the point of sale that meets all of the following requirements:
 - 1. The bag contains a minimum of forty percent (40%) postconsumer recycled material; or if the bag is rated at eight pounds or less, twenty percent (20%) postconsumer recycled material.
 - 2. The bag is capable of composting, consistent with the time limits and specifications of the American Society of Testing and Material (ASTM) Standard D6400.
 - 3. The bag has printed on the bag the name of the manufacturer, the country where it was manufactured, and the minimum percentage of post-consumer content.
- C. **“Retail establishment”** means a licensed business located within the City of Bisbee that provides one or more consumer items to its customers intended for off-site use or consumption. For purposes of this Article, any restrictions imposed upon a “retail establishment” shall be equally applicable to the employees, managers, owners, contractors, and agents of that retail establishment.

- D. **“Reusable carryout bag”** means a bag with handles that is specifically designed and manufactured for multiple reuse; is either made of cloth, fiber, or other machine washable fabric, or made of durable plastic material that is at least 2.25 millimeters thick; and does not contain lead, cadmium, or any other heavy metals in toxic amounts.
- E. **“Single-use carryout bag”** means a bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale or checkout counter to carry purchases from the store and that does not meet the requirements of a “reusable carryout bag” as defined in this Article and that is not classified as an “exempt single use bag” in this Article.
- F. **“Single-use plastic carryout bag”** means a “single use carryout bag” made from plastic or bioplastic, including such materials marketed or labeled as “biodegradable” or “compostable,” and that is not a reusable carryout bag, a recycled paper bag, or an exempt single-use bag, as those terms are defined in this Article.

9.7.3. Carryout Bag Restrictions

- A. On and after April 22, 2014, (Earth Day), a retail establishment shall not provide a single-use carry-out bag to a customer at the point of sale, except as provided in this Section.
- B. On and after April 22, 2014, no retail establishment in the City of Bisbee shall provide a single use plastic carryout bag to a customer.
- C. A retail establishment in the City of Bisbee may provide reusable carryout bags to customers at no cost or for a fee.
- D. On and after April 22, 2014, a retail establishment may provide a customer with one or more recycled paper bags upon request by the customer, but only if each such bag is subject to a reasonable fee, charged to the customer and collected by the retail establishment, in an amount not less than five cents (\$.05), unless that customer is exempt from this fee, pursuant to this Article.
- E. Customers who are making purchases as participants in the supplemental food program for Women, Infants, and Children, (“WIC”) or who are making purchases as participants in the Supplemental Nutrition Assistance Program (“food stamps” or SNAP), or any similar successor low income food assistance programs, shall be exempt from the bag fee for recycled paper bags.

9.7.4 Establishment of a Fee for the Use of Recycled Paper Bags

- A. On and after April 22, 2014, a fee of not less than Five Cents (\$0.05) per recycled paper bag shall be collected from consumers who make purchases from a retail establishment that is subject to these regulations and who accept a recycled paper bag or bags from that establishment. This per bag fee is subject to the following conditions:
 - 1. Fees must be paid by the consumer at the time of purchase.
 - 2. Retail establishments may not pay the fee on behalf of consumers.
 - 3. All Retail Establishments shall indicate on the consumer transaction receipt the number of recycled paper bags provided to that customer and the total amount of the fee that was charged for them.
- B. The fee of Five Cents per bag shall be distributed as follows:
 - 1. The retail establishment may retain its cost of each recycled paper bag, together with the administrative costs and all direct and indirect costs incurred by the retail establishment in implementing this program.
 - 2. The retail establishment shall remit to the City of Bisbee, Finance Department, the remainder of the fee collected for each bag, over and above the amount of its authorized costs and expenses, if any, to be deposited into the City of Bisbee Environmental Fund.
- C. The fees are to be distributed to the City of Bisbee Finance Department by each retail establishment subject to these fees, on a monthly basis, on or before the fifteenth (15th) day of the subsequent month, if the amount of the fees equals or exceeds Two Hundred and Fifty Dollars (\$250.00) per month; and on a quarterly basis, on or before the fifteenth (15th) day of the subsequent quarter, (Jan., April, July, Oct.) if the amount of the fees is less than that on a monthly basis. Each submittal to the City of Bisbee shall include an itemization of the number of disposable carryout bags provided during that period and a signed verification that this accounting is true and correct, to the best of the knowledge and information of the submitter. The Finance Director may provide forms for this purpose. If there are no excess proceeds collected from these fees, the retail establishment shall

provide the Finance Director with an itemized statement which confirms these expenses and shall thereafter have no obligation to provide either monthly or quarterly reports, unless that situation changes.

9.7.5 The City of Bisbee Environmental Fund

The City of Bisbee Environmental Fund is a special revenue fund, established and maintained by the Finance Director, for the deposits of the City's portion of the per bag fee, if any, and such other revenue as may be dedicated or donated to this Fund. The City of Bisbee Environmental Fund shall be used for the following purposes, as specifically allocated by the Mayor and Council in each annual budget:

- A. Providing reusable carryout bags to City residents, with a priority of assisting seniors, the disabled and low-income members of this community.
- B. Purchasing additional equipment, vehicles and supplies to enhance the recycling program of the City of Bisbee.
- C. Promoting and supporting conservation, clean-up and recycling programs within this community.
- D. Promoting and supporting education programs for the general public and school groups, regarding recycling, reduction, and reuse of materials and protection of the local environment.
- E. Paying for the administration of these regulations and the collection of the fees.

9.7.6 Violations, Penalties and Enforcement

The failure of any retail establishment that is subject to these regulations to comply with these restrictions, to fail to collect the required fees, or to fail to remit any sum to the City of Bisbee, if required, shall be a civil violation, subject to the following penalties:

- A. For a first violation, a written warning and notice of violation shall be issued to the manager or owner of the retail establishment. No fine shall be assessed for a first violation.
- B. For a second violation, a civil penalty of One Hundred Dollars (\$100.00).
- C. For a third violation, a civil penalty of Two Hundred Dollars (\$200.00).

- D. For each subsequent violation, a civil penalty of Five Hundred Dollars (\$500.00).

No more than one notice of violation shall be issued to a retail establishment within any seven (7) day period for the same violation. A violation that occurs more than twelve (12) months after a prior violation by the same establishment shall be treated as a “first violation.” If the retail establishment is incorporated or otherwise constituted as a separate legal entity, the violation notice shall be issued to that legal entity. If the retail establishment is operated as a sole proprietorship or by one or more individual partners, the violation notice shall be issued to one or more of the individual owners.

If the retail establishment has violated these regulations repeatedly and been subject to more than one Five Hundred Dollar civil penalty, that retail establishment may be subject to an injunction, ordering it to cease doing business in the City of Bisbee unless and until it complies with these regulations and terminating its existing business license, ending its authorization it to conduct business in the City of Bisbee, pending such compliance.

The City Manager is authorized to designate City staff to implement this program, inspect retail establishments for compliance, initiate enforcement actions, and to pursue any necessary judicial actions to collect unpaid penalties and enforce these provisions.