

Sec. 38-38. - Short Title.

This article may be cited as the "Thin-film Plastic Bags Ordinance."

Sec. 38-39. - Purposes and Intent.

The purposes of this article are to regulate the retail distribution of thin-film plastic bags in the City of Medford; to encourage the use of recyclable paper bags and reusable bags and to encourage retail establishments to offer recyclable paper bags and reusable bags.

Sec. 38-40. - Definitions.

Thin-film plastic bag shall mean a bag made of a non-biodegradable plastic that is less than 4.0 mils (4/1000th of an inch) in thickness.¹

Recyclable paper bag shall mean a paper bag that is 100% recyclable and contains at least 40% post-consumer or a symbol identifying the bag as recyclable and has a label identifying the bag as being made from post-consumer recycled content and listing the percentage of post-consumer recycled content in the bag.

Reusable bag shall mean a bag that is specifically designed and intended for multiple uses and is made of:

- (i) plastic with a thickness of at least 4.0 mils; or
- (ii) fabric such as a sewn bag with stitched handles that is specifically designed for multiple reuse and that (a) can carry 25 pounds over a distance of 300 feet; (b) is capable of being washed and disinfected; and, (c) is either (1) made of natural fibers (such as cotton or linen); or (2) made of durable, non-toxic plastic other than polyethylene or polyvinyl chloride that is generally considered a food-grade material that is at least 4.0 mils thick; or
- (iii) Other durable materials.

Checkout bag shall mean a carryout bag provided by a retail establishment to a customer at the point of sale. Checkout bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or checkout area of the store.

Product bag shall mean a bag utilized to contain a product as part of its packaging.

Retail establishment shall mean any person, corporation, partnership, business venture, or vendor that sell or provide merchandise, goods or materials directly to a customer including but not limited to restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses, jewelry stores, and household goods stores; however, the term retail establishment shall not include bazaars, festivals or similar events operated by nonprofit organizations, religious institutions or governmentally sponsored events the duration of which do not exceed three consecutive calendar days.

Sec. 38-41 - Limitations.

Regulated activities.

- a. Retail establishments shall not provide a *thin-film plastic bag* to a customer for use as a checkout bag.

¹ This sentence and the last clause of section (ii) reflect correction of scrivener errors in the original.

- b. Retail establishments may provide recyclable paper bags or reusable bags to its customers at the point of checkout.
- c. Nothing in this article shall prohibit customers of a retail establishment from using bags of any type that they bring into the retail establishment themselves or from carrying away goods without the use of a bag.

Alternative activities.

Retail establishments, at their sole election, may sell or otherwise distribute recyclable paper bags and/or reusable bags within the City of Medford.

Sec. 38-42 Exemptions

The following are exempt and not subject to the provisions of this chapter:

(1) Bags used by customers inside establishments to:

- (a) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
- (b) Contain or wrap frozen foods, meat, or fish, whether packaged or not;
- (c) Contain or wrap flowers, potted plants, or other items where dampness may be a problem.

(2) Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage, waste, pet waste or yard waste.

(3) Product bags.

Sec. 38-43. - Enforcement.

- (a) Regulations. Consistent with this article, the Board of Health of the City of Medford may promulgate regulations to enforce and otherwise implement the provisions of this article one hundred twenty (120) days from the date it comes into effect.
The Board of Health shall establish an application process and make determinations as to the classification of new single-use bag products, as they come on the market, to determine whether such product meets the requirements of this Article.
- (b) Noncriminal disposition. The Board of Health Inspectors and the Code Enforcement Officer will be responsible to enforce this chapter through the issuance of a violation notice. If the city determines that a violation of this article has occurred at or by a retail establishment, such retail establishment shall be penalized by a noncriminal disposition as provided in G.L. c. 40, § 21D in the amounts set forth in section 38-43 (d) of this article.
- (c) Warning. Upon the first violation of this article at or by a retail establishment, the city shall provide such retail establishment written notice that such first violation has occurred and issue a warning that any subsequent violations within a twelve (12) month period shall require the imposition of monetary penalty. No monetary penalty shall be imposed for this first violation.
- (d) Subsequent violations. Upon subsequent violations of this article at or by a retail establishment within twelve (12) months after a first violation, the city shall impose and provide the retail establishment written notice a monetary penalty for each day that the retail establishment is in violation of this ordinance. Such monetary penalty shall not exceed the following amounts:

- (1) One hundred dollars (\$100) for the second violation;
- (2) Two hundred dollars (\$200) for the third violation; and
- (3) Three hundred dollars (\$300) for the fourth and each subsequent violation.

(e) Late payment. If payment of any monetary penalty is not received on or before the date when due, the city shall impose an additional penalty as provided by the regulations promulgated pursuant to this article.

Sec. 38-44. Deferment

Upon written application from a retail establishment, the Board of Health, after a public hearing, may temporarily defer application of this article for a retail establishment for up to a one-year period, upon a showing by the retail establishment that the conditions of this article would cause undue hardship. The Board of Health shall, in its sole discretion, decide as to whether the applicant has an "undue hardship" according to the standards set forth in this article. The establishment must reapply prior to the end of the one-year exemption period and demonstrate continued undue hardship if it wished to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.

An "undue hardship" shall only be found in:

1. Circumstances or situations unique to the particular retail establishment such that there are no reasonable alternatives to bags that are not recyclable paper bags or reusable bags; or
2. Circumstances or situations unique to the retail establishment such that compliance with the requirements of this chapter would deprive a person of a legally protected right; or
3. Circumstances where a retail establishment requires additional time in order to draw down an existing inventory of single-use plastic check out bags. Any retail establishment receiving an exemption shall file with the Director of the Board of Health monthly reports on inventory reduction and remaining stocks.

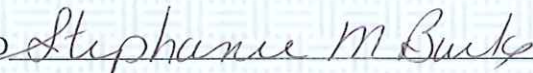
Sec. 38-45. - Effective date.

To facilitate compliance by retail establishments, enforcement of this article shall be suspended until date that is one hundred eighty (180) days from the date that the mayor approves this article or it otherwise comes into force. During such period of suspension, the city shall direct an effort to educate retail establishments and the general public about this article.

Sec. 38-46. - Severability

Each separate provision of this article shall be deemed independent of all other provisions herein. If a court of competent jurisdiction declares that any provision of this article is invalid, then the remaining provisions of this article shall remain valid and enforceable of this article.

APPROVED



MAYOR

IN COUNCIL NOVEMBER 20, 2018 PASSED TO TAKE ITS FIRST READING

ADVERTISED DECEMBER 6, 2018 MEDFORD TRANSCRIPT

IN COUNCIL JANUARY 8, 2019 PASSED TO TAKE ITS THIRD READING TO BE ORDAINED

APPROVED _____



CITY SOLICITOR

A TRUE COPY, ATTEST



ADAM L. HURTUBISE
CITY CLERK