

## PROPOSED PITTSFIELD BAG ORDINANCE

**TITLE:** A green ordinance eliminating the use of single-use plastic bags in retail sales, and requiring the use of reusable bags and/or recyclable paper bags as checkout bags to customers for retail sales, and further requiring that all food and beverage grocery bags shall use only reusable bags, while allowing plastic bags to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale.

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### **SECTION 1, PURPOSE:**

This ordinance is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the city.

### **SECTION 2, EFFECTIVE DATE:**

This ordinance shall take effect on January 1, 2016.

### **SECTION 3, FINDINGS:**

Globally, the production and use of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil. Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, many of which end up as litter each year. These bags last hundreds of years in landfills and are a potential source of harmful chemicals when they do break down.

Most plastic carry-out bags do not biodegrade, but instead photo-degrade, which means that the bags break down into smaller and smaller toxic bits that enter the food web when animals mistake those materials for food.

Plastic bags are costly, environmentally damaging, and easily preventable sources of litter and pollution. Light and aerodynamic, plastic bags can become airborne even when properly disposed of; bags photodegrade and disintegrate into particles, littering our urban landscape and posing a serious threat to the riparian and marine environments and wildlife. Even when they are no longer obvious to the naked eye, plastic degrades into tiny particles that adsorb toxins and contaminate our food chain as well as water and soil.

Polyethylene plastic bags represent an unnecessary use of a nonrenewable resource. Reusable carryout bags represent the sustainable alternative to single use bags of all types.

Alternatives to plastic bags are readily available and include reusable cloth bags and recyclable paper bags. Retail establishments could do more to better the environment by encourage customers to use reusable bags, making single-use plastic unnecessary.

Plastic shopping bags create significant litter problems in our city's neighborhoods and also its streets, parks, creeks and open space lands.

Non-biodegradable plastic bags often are discarded into the environment and end up polluting our waterways, clogging sewers, endangering marine life and causing unsightly litter.

Reusable carryout bags are considered worldwide to be the best option to reduce waste and litter, protect wildlife, and conserve resources. Reusable bags have lower associated greenhouse gas emissions than single use bags and are readily available and affordable for the consumer.

We recognize a duty to protect the natural environment, the economy, and the health of our citizens.

It is the intent to reduce the negative impacts of polyethylene plastic carryout bags and encourage the use of reusable carryout bags through the implementation of this ordinance.

As far as environmental degradation and preservation of natural resources is concerned, a bag designed for multiple uses is preferable over a recyclable, single use paper bag. We are cutting down trees at an alarming rate, and there is still an environmental impact of recyclable paper bags. We as a city encourage the use of reusable bags in all retail sales as being the most eco-friendly, even over recyclable paper bags.

We find that a recyclable paper bag that contains no old growth fiber and is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content is more environmentally friendly than a plastic grocery bag.

We also recognize that food and beverage grocery bags of food and beverages are highly susceptible to the use of reusable bags without great inconvenience or cost to merchant or customer.

However, for retail sales not involving the sale of food or beverages prepared on the premises, the city will also accept check out bags that are made of recyclable paper, as long as the bags are sold for 25 cents. Since all customers can opt to use reusable bags, their own handbags or knapsacks, hand-carry, or use manufacturer's boxes at retail establishments which is

preferable to single use recyclable paper bags, the 25 cent surcharge will incentive the use of these alternatives, while still using single-use recyclable paper bags.

Most of the people that live in the city travel by motor vehicle. It is anticipated, over the course of time, residents will develop the habit of keeping reusable checkout bags in their motor vehicle for purchases. Those using other means of transportation to get to retail establishments over the course of time will develop the habit of bringing recyclable bags. Many tourists might already have recyclable bags in their mother vehicles. Many non-residents who purchase reusable bags may be encouraged to use reusable bags in their home communities.

Single-use plastic bags have been banned in communities throughout the United States.

#### **SECTION 4, DEFINITIONS:**

**"CHECKOUT BAG"** means a carryout bag that is provided to a customer at the point of sale. A bag without handles intended by the manufacturer to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale shall not be a "checkout bag." The Board of Health shall have final say as to what is or is not a "checkout bag."

**"FOOD AND BEVERAGE GROCERY CHECKOUT BAG"** means a type of checkout bag that carries (in whole or part) food or beverages, wherein the food or beverage was not substantially prepared on premises, wherein further the food or beverage is to be consumed off premises. A bag without handles intended by the manufacturer to carry vegetables, fruits, meat, or bulk food product from a vegetable, fruit, bulk food or meat department within a store to the point of sale shall not be a "food and beverage grocery bag." A checkout bag is not a "food and beverage grocery bag" if the checkout bag does not contain (in whole or part) food or beverages, wherein the food or beverage was not substantially prepared on premises, wherein further the food or beverage is to be consumed off premises

The Board of Health shall have final say as to what is or is not a "food and beverage grocery bag."

**"RETAIL ESTABLISHMENT"** means any commercial establishment that sells perishable or nonperishable goods for use off premises including, but not limited to, clothing, food, and personal items which are to be directly used by the customer. The Board of Health shall have final say as to what is or is not a "retail establishment."

**"RETAIL SALES"** means the transfer to a customer of goods in exchange for payment occurring in a retail establishment. The term "retail sales" does not include sales of goods at yard sales, tag sales, other sales by residents at their home, and sales by not-for-profit organizations. The Board of Health shall have final say as to what is or is not "retail sales."

**"RECYCLABLE PAPER BAG"** means a paper bag that should have the following characteristics:

- (1) contains no old growth fiber; and
- (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content; and
- (3) displays the words "Reusable" and "Recyclable" on the outside of the bag.

The Board of Health shall have final say as to what is or is not a "recyclable paper bag."

**"REUSABLE BAG"** means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

1. has a minimum lifetime of 125 uses, which for purposes of this ordinance means the capability of carrying a minimum of 22 pounds, 125 times over a distance of at least 175 feet; and
2. has a minimum volume of 15 liters; and

3. is machine washable or is made of a material that can be cleaned or disinfected; and
4. if made of plastic, is a minimum of at least 2.25 mils thickness.

The Board of Health shall have final say as to what is or is not a "reusable bag."

**"MANUFACTURER'S CARDBOARD BOX"** means a cardboard box in which goods were shipped, where the box was designed primarily for shipment by the manufacturer of the cardboard box for multiple sales units of the good. The Board of Health shall have final say as to what is or is not a "manufacturer's cardboard box."

**SECTION 5, PROHIBITION:**

- A. **RETAIL SALES, NON-GROCERIES:** Any person engaged in retail sales shall provide only reusable bags and/or recyclable paper bags as checkout bags to customers. Checkout bags that are recyclable paper bags shall be sold for a cost of 25 cents and shall not be distributed free of charge.
- B. **RETAIL SALES, GROCERIES:** Any person engaged in retail sales wherein the checkout bags are food and beverage grocery bags, shall only use checkout bags that are reusable bags. Checkout bags that are food and beverage grocery bags shall not be a recyclable paper bag unless the recyclable paper bag also qualifies as a reusable bag.
- C. **SELLING REUSABLE BAGS NOT PROHIBITED:** Nothing in this section shall preclude persons engaged in retail sales from making reusable bags available for sale to customers.
- D. **USE OF MANUFACTURER'S CARDBOARD BOX TO CARRY ITEMS OUT NOT PROHIBITED:** Nothing in this section shall preclude persons engaged in retail sales from reusing a manufacturer's cardboard box or otherwise making the manufacturer's cardboard box available to the customer for use in carrying out goods.

**SECTION 6, DEFERMENTS:**

- A. Upon written application, the Board of Health, after a public hearing, may defer application of this ordinance for a retail establishment for a one year period, upon a showing by the retail establishment that the conditions of this ordinance would cause undue hardship.

For purposes of this ordinance, an "undue hardship" is a situation unique to the retail establishment where there are no reasonable alternatives to the use of reusable bags and/or recyclable paper bags as checkout bags for retail sales not involving food or beverages not prepared on premise, and compliance with this ordinance would cause significant economic hardship to that retail establishment. For purposes of this ordinance, an "undue hardship" is also a situation unique to the retail establishment where there are no reasonable alternatives to the use of reusable bags as food and beverage grocery checkout bags, and compliance with this ordinance would cause significant economic hardship to that retail establishment.

- B. A retail establishment granted a deferment by the City must reapply prior to the end of the one year exemption period and demonstrate continued undue hardship, if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed one year.
- C. A deferment granted in accordance with this Section may be extended for no more than one additional one year period, upon written application to the Board of Health at least two months prior to the expiration of the first deferment period and upon a showing that the circumstances justifying the deferment continue to exist.
- D. A deferment application shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Board of Health may require

the applicant to provide additional information to permit it to determine facts regarding the deferment application.

E. The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the public health and further the interests of this ordinance.

F. Deferment decisions are effective immediately and final.

**SECTION 7, ENFORCEMENT:**

A. The Board of Health or its designee shall inquire on an annual basis regarding any retail establishment's compliance with this ordinance.

B. The Board of Health, after ten (10) separate violations of this ordinance by the retail establishment on ten (10) different days within any 360 day period, after a public hearing with due process rights of participation afforded to the retail establishment so that they may present evidence, may order that the retail establishment to remain closed for any period deemed necessary up to six months to obtain compliance with this ordinance. Only the Board of Health itself shall have the power to conduct public hearings on whether to close a retail establishment, and this power shall not be delegated to anyone else, including but not limited designees of the Board of Health or the Police Department and its designees. The rulings of the Board of Health concerning closings retail establishments for violation of this ordinance shall be final.

C. The Board of Health or its designee and the Police Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Board of Health or its designee and the Police Department or its designee is authorized to establish regulations or administrative procedures and to take any and all actions



reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance in accordance with applicable law.

- D. The Board of Health and the Police Department or its designee may enforce this by-law or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health or the Police Department shall not preclude enforcement through any other lawful means.
- E. Any member of the public who observes a potential violation of this ordinance shall be able to file a complaint with the Board of Health or its designee shall investigate whether there is a violation of this ordinance. When deemed necessary by the Board of Health or its designee, the Police Department shall assist in the investigation and shall assist in identifying violators. A member of the public shall also be able to file a complaint with the Police Department if they believe there has been a violation of this ordinance, and the Police Department or its designee shall investigate.
- F. Penalties and Fines for Violations of this ordinance may be enforced as follows:
- G. This ordinance shall be enforced by the Board of Health or its designee, or the Chief of Police or his/her designee, save that deferment applications or retail establishment closings public hearings shall only be heard by the Board of Health and not the Police Department, and the Board of Health shall not delegate its authority to conduct public hearings regarding deferments or closing retail establishments. Whoever violates any provision of this ordinance may be penalized by a non-criminal disposition process as provided in G.L. c.40, §21D and the City's non-criminal disposition ordinance. If non-criminal disposition is elected, then any person who violates any

provision of this ordinance shall be subject to the following penalties:

1. For the first violation, the Board of Health or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the retail establishment which will specify the violation and the appropriate penalties in the event of future violations. The warning should also state that the retail establishment may be closed if it fails to comply. Thereafter, the following penalties shall apply:

(a). A fine of one hundred dollars (\$100.00) for the first violation following the issuance of a warning notice.

(b). A fine of two hundred and fifty dollars (\$250.00) for the second and any other violation that occurs following the issuance of a warning notice.

2. Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. In no event shall there be more than one violation per day assessed against a retail establishment.

3. Whoever violates any provision of this ordinance may also be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars.

SECTION 8, CODIFICATION:

This ordinance shall be codified as "CHECKOUT BAG RESTRICTIONS FOR RETAIL STORES AND GROCERY STORES" and be placed as Chapter 7  $\frac{3}{4}$  of the Pittsfield City Code.

ALTERNATIVE CODIFICATION: This ordinance shall be codified as "FOOD AND DRINK CONTAINERS FOR READY-TO-CONSUME FOOD OR BEVERAGES" and be placed under Chapter 2, Administration, Article VIII Board of Health, Section 2-89.4 of the Pittsfield City Code.

CHAPTER 4  $\frac{1}{2}$ -2, CRIMINAL AND NON-CRIMINAL ENFORCEMENT, ENFORCEMENT, NON-CRIMINAL DISPOSITION, shall be modified to include:

"FOOD AND DRINK CONTAINERS FOR READY-TO-CONSUME FOOD OR BEVERAGES, [Chapter 7  $\frac{3}{4}$  or Chapter 2, Article VIII, Section 2-8.94, depending on what was chosen], Enforcement Officers, Director of Public Health or his/her designee, Police Chief or his/her designee, except Deference Applications and Public Hearings to close a facility shall be heard only by the Board of Health and shall not be delegated to anyone else."