

**DRAFT**

**ORDINANCE NO. XX**

**“EXHIBIT A”**

**CHAPTER 7 – BUSINESS**

**CITY OF FOREST GROVE CODE AMENDMENTS**

**NEW CODE SECTION 7.900 – 7.930**

**SINGLE-USE PLASTIC CARRYOUT BAGS**

**7.900** **Purpose.** The purpose of Code Sections 7.900 – 7.930 is to prohibit use of single-use plastic carryout bags at retail establishments, any city facilities, city managed concessions, city sponsored events and/or city permitted events, and requires retailers to charge at least five cents for a paper bag.

**7.905** **Plastic Bag Use; Definitions.**

For purposes of Code Sections 7.900 – 7.930, the following terms are defined as follows:

ASTM standard. The American Society for Testing and Materials (ASTM)'s International D-6400.

Carryout bag. Any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment.

“Carryout bag” does not include:

- (1) Bags used by consumers inside retail establishments to:
  - a) Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
  - b) Contain or wrap frozen foods, meat, fish, whether packaged or not;
  - c) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
  - d) Contain unwrapped prepared foods or bakery goods; or
  - e) Pharmacy prescription bags;
- (2) Laundry-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.

City sponsored event. Any event organized or sponsored by the city or any department of the city.

Customer. Any person obtaining goods from a retail establishment or from a vendor.

Food provider. Any person in the City that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck or vehicle.

Grocery store. Any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items and includes supermarkets, convenience stores, and gasoline stations.

Pharmacy. A retail use where the profession of pharmacy by a pharmacist licensed by the State of Oregon's Board of Pharmacy is practiced and where prescription medications are offered for sale.

Product or produce bag. Any bag without handles provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point of sale within the retail establishment. A product or produce bag is not a carryout bag.

Recyclable paper bag. A paper bag that meets all of the following requirements:

- a) Is 100% recyclable and contains a minimum of 40% post-consumer recycled content;
- b) Is capable of composting consistent with the timeline and specifications of the ASTM Standard D6400 as defined in this section.

Retail establishment. Any store or vendor located within or doing business within the geographical limits of the city that sells or offers for sale goods at retail.

Reusable bag. A bag made of cloth or other material with handles that is specifically designed and manufactured for long-term multiple reuses and meets all of the following requirements:

- a) If cloth, is machine washable; or
- b) If plastic, has a minimum plastic thickness of 4.0 mils; and
- c) Does not contain lead, cadmium, or any other heavy metal in toxic amounts as defined by applicable state and federal standards and regulations for packaging or reusable bags.

Vendor. Any retail establishment, shop, restaurant, sales outlet or other commercial establishment located within or doing business within the geographical limits of the City that provides perishable or nonperishable goods for sale to the public.

Single-use plastic carryout bag. Any plastic carryout bag made predominately of plastic, either petroleum or biologically based, and made available by a retail establishment to a customer at the point of sale. It includes compostable and biodegradable bags but does not include reusable bags, recyclable paper bags, or product or produce bags.

Undue hardship. Circumstances or situations unique to the particular retail establishment such that there are no reasonable alternatives to single-use

plastic carryout bags or a recyclable paper bag pass-through cannot be collected.

**7.910** **Plastic Bag Use - Regulations.** Except as exempted in Section 7.920 of this Code:

- a) No retail establishment shall provide or make available to a customer a single-use plastic carryout bag;
- b) No person shall distribute or provide a single-use plastic carryout bag at any city facility, city managed concession, city sponsored event, or city permitted event.

**7.915** **Plastic Bag Use - Cost Pass-Through.** When a retail establishment makes a recyclable paper bag available to a customer at the point of sale pursuant to section 7.920(b) of this code, the retail establishment shall:

- a) Charge the customer a reasonable pass-through cost of not less than 5 cents per recyclable paper bag provided to the customer; and
- b) Not rebate or otherwise reimburse any customer any portion of the pass-through cost; and
- c) Except for the exemption in 7.920(d), indicate on the customer's transaction receipts the total amount of the recyclable paper bag pass-through charge.

**7.920** **Plastic Bag Use - Exemptions.** Notwithstanding Sections 7.910 and 7.915 of this Code:

- a) Single-use plastic carryout bags may be distributed to customers by food providers for the purpose of safeguarding public health and safety during the transportation of hot prepared take-out foods and prepared liquids intended for consumption away from the food provider's premises.
- b) Retail establishments may distribute product bags and make reusable bags available to customers whether through sale or otherwise.
- c) A retail establishment shall provide a reusable bag or a recyclable paper bag at no cost at the point of sale upon the request of a customer who uses a voucher issued under the Women, Infants and Children Program established in the Oregon Health Authority under ORS 413.500.
- d) Vendors at retail fairs such as a farmers' market or holiday fair are not subject to indicating on the customer's transaction receipt the total amount of the recyclable paper bag pass-through charge required in section 7.915(b) of this Code.
- e) The City Manager or the designee may exempt a retail establishment from the requirement set forth in sections 7.910 – 7.915 of this Code for a period of not more than one year upon the retail establishment showing, in writing, that

this Code would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the City Manager's or designee's decision shall be final.

**7.925**      **Promotion of Reusable Bags.** Retail establishments and vendors are strongly encouraged to educate their staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

**7.930**      **Violations and Penalties.**

- (1)      Any retail establishment or vendor violating Sections 7.900 – 7.920 is subject to a civil penalty in the amount of not less than \$100 and not more than \$250.
- (2)      The Enforcement Officer may cite into Municipal Court for any violations.

OR –

(1)      Any retail establishment or vendor violating Sections 7.900 – 7.920 shall be as provided by Code Section 1.095. (General Penalty, Not to Exceed \$1,000)

OR –

(1)      Any retail establishment or vendor violating Sections 7.900 – 7.920 is subject to:

- A.      Upon the first violation, the Enforcement Officer shall issue a warning notice to the retail establishing or vendor that a violation has occurred.
- B.      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.
- C.      No more than one penalty shall be imposed upon any single location of retail establishment or vendor within a 7-day period.

(2)      Upon making determination that a violation of this code or regulations has occurred, the Enforcement Officer will send a written notice of the violation by mail to the retail establishment or vendor specifying the violation and the applicable penalty as set forth in subsection 1.

(3)      Any retail establishment or vendor receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation in accordance with the procedures set forth in Code Section 1.090.