

Offered by Councilors Matt O'Malley and Michelle Wu



CITY OF BOSTON

IN THE YEAR TWO THOUSAND SIXTEEN

IN CITY COUNCIL

**AN ORDINANCE REGARDING THE
REDUCTION OF PLASTIC BAGS IN BOSTON**

WHEREAS: The production, use and disposal of single-use plastic bags have significant adverse impacts on the environment and their light weight makes them particularly susceptible to air currents that land them in the streets, gutters, abandoned lots, and trees throughout the City; and

WHEREAS: The City of Boston desires to conserve resources, reduce greenhouse gas emissions, waste, and marine pollution and to protect the public health and welfare of its residents; and

WHEREAS: Plastic bag consumers contribute to a significant burden on the City's solid waste disposal and single stream recycling systems.

NOW THEREFORE,

Be it Ordained by the City Council of Boston as follows:

City of Boston Code, Ordinance Chapter XVII is hereby amended by adding at the end thereof, the following new sections and subsections.

**CHAPTER 17-19
REDUCTION OF CHECKOUT BAGS BY RETAIL ESTABLISHMENTS**

17-19.1 Purpose

The purpose of this ordinance is to reduce the use of disposable checkout bags by Retail Establishments in the City of Boston, curb litter on the streets, protect marine environment, waterways, reduce greenhouse gas emissions, and solid waste, and to promote the use of Reusable Bags by Retail Establishments located in the City.

17-19.2 Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

- a. "City" means the City of Boston and its legal limits and all rights of access and easements in and licenses to use land areas outside of its legal limits as to which it has the right or obligation to maintain.
- b. "Chief" means the Chief of Environment, Energy and Open Space or his/her designee.
- c. "Checkout Bag" means a carryout bag provided by a store to a customer at the point of sale. Checkout Bags shall not include:
 1. Bags, whether plastic or not, in which loose produce or products are placed by a consumer to deliver such items to the point of sale or check-out area of a Retail Establishment; or
 2. Laundry or dry-cleaner bags; or
 3. Newspaper bags; or
 4. Bags used to contain or wrap frozen foods, meat or fish, whether prepackaged or not, to prevent or contain moisture.
- d. "Compostable Plastic Bag" means a plastic bag that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.
- e. "Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and (3) displays the words "Recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.
- f. "Retail Establishment" means any person, corporation, partnership, business venture, or vendor that sell or provide merchandise, goods or materials directly to a customer, whether for or not for profit, 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 does not include bazaars or festivals operated by nonprofit organizations or religious institutions.

- g. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either polyester, polypropylene, cotton or other durable material, or durable plastic that is at least 3.0 mils in thickness.

17-19.3 Requirements

- a. If any retail establishment provides a checkout bag to customers, the bag shall comply with the requirements of being a Reusable Bag, a Recyclable Paper Bag, or a Compostable Plastic Bag.
- b. A store that provides any type of checkout bag shall sell them for no less than five cents (\$0.05) per bag. All moneys collected pursuant to this ordinance shall be retained by the store.
- c. Any charge for a checkout bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "checkout bag charge" thereon.
- d. The Chief of Environment, Energy and Open Space may promulgate rules and regulations to implement this section.

17-19.4 Enforcement

- a. If it is determined that a violation has occurred the Office of Environment, Energy and Open Space shall issue a warning notice to the Retail Establishment for the initial violation.
- b. If an additional violation of this Ordinance has occurred within one year after a warning notice has been issued for an initial violation, the Chief shall issue a notice of violation and shall impose a penalty against the retail establishment.
- c. The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:
 - 1. \$50 for the first offense
 - 2. \$100 for the second offense and all subsequent offenses. Payment of such fines may be enforced through civil action in the state District Court.
- d. Whoever violates any provision of this chapter may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the Chief of Environment, Energy and Open Space or his/her designee shall be the enforcing person.

17-19.5 Exemption

- a. The Chief may exempt a retail establishment from the requirements of this chapter for a period of one year upon a finding by the Chief that the requirements of this chapter would cause undue hardship to a retail establishment. An "undue hardship" shall be found only 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, Compostable Plastic 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 Chief monthly reports on inventory reduction and remaining stocks.
- b. Any Retail Establishment shall apply for an exemption to the Chief using forms provided by the department, and shall allow the Chief, or his or her designee, access to all information supporting its application.
- c. The Chief may approve the exemption request, in whole or in part, with or without conditions.
- d. The Chief by regulation, may establish a fee for exemption requests.

17-19.6 Effective Date

- a. All of the requirements set forth in this by-law shall take effect within a year of passage.

17-19.7 Severability

- a. It is the intention of the City Council that each separate provision of this chapter shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this chapter be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this chapter shall remain valid and enforceable.