

Council Business Meeting

March 17, 2020

Agenda Item	Second Reading of Ordinance No. 3182 Relating to Checkout Bags, Repealing and Replacing Ashland Municipal Code Chapter 9.21	
From	Katrina L. Brown	Assistant City Attorney
Contact	katrina.brown@ashland.or.us	

SUMMARY

The City Council is being asked to review and act on the second reading of proposed Ordinance No. 3182 which would repeal and replace Ashland Municipal Code (AMC) Chapter 9.21, Prohibition on Distribution of Single Use Plastic Bags. The ordinance is necessary to bring the Ashland Municipal Code into compliance with a new state law which became effective on January 1, 2020.

POLICIES, PLANS, AND GOALS SUPPORTED

1. Provide, promote, and enhance the security/safety, environmental health, and livability of the community (Quality of Life Administrative Goal)

PREVIOUS COUNCIL ACTION

In 2014, the City of Ashland adopted Ordinance No. 3094 banning the use single use plastic bags. Ordinance No. 3094 also mandated that retail establishments charge customers a reasonable pass-through cost of not less than ten cents per recyclable paper bag provided.

BACKGROUND AND ADDITIONAL INFORMATION

During its 2019 session, the Oregon State Legislature passed House Bill 2509 (“Bill”) addressing the provision of checkout bags by restaurants and retail establishments to customers. The Bill mandates that cities and other local governments adopt definitions, requirements, and restrictions that are identical to those established in the Bill. However, a city or other local government may adopt, amend, or enforce a local provision requiring a restaurant or retail establishment to charge a fee of more than five cents per bag. Proposed Ordinance No. 3182 would replace AMC Chapter 9.21 with the definitions, requirements, and restrictions set forth in the Bill while maintaining the ten cents per bag charge as currently set forth in AMC Chapter 9.21.

FISCAL IMPACTS

The fiscal impact to the City would be minimal.

ACTIONS, OPTIONS, AND POTENTIAL MOTIONS

1. I move to approve Second Reading of Ordinance No. 3182.
2. I move to decline approval of Ordinance No. 3182.

STAFF RECOMMENDATION

Staff recommends that Council approve Second Reading of Ordinance No. 3182.

REFERENCES AND ATTACHMENTS

Attachment 1: Proposed Ordinance No. 3182

Attachment 2: House Bill 2509

ORDINANCE NO. 3182

**AN ORDINANCE RELATING TO CHECKOUT BAGS; REPEALING AND
REPLACING AMC CHAPTER 9.21.**

Annotated to show deletions and additions to the Ashland Municipal Code sections being modified. Deletions are **bold lined through**, and additions are **bold underlined**.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Ashland Municipal Code Chapter 9.21, Prohibition on Distribution of Single Use Plastic Bags, is hereby repealed in its entirety as follows:

9.21.010 Definitions

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

B. 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:

a. Bags used by consumers inside retail establishments to:

- ~~1. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;~~
 - ~~2. Contain or wrap frozen foods, meat, fish, whether packaged or not;~~
 - ~~3. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;~~
 - ~~4. Contain unwrapped prepared foods or bakery goods; or~~
 - ~~5. Pharmacy prescription bags;~~

~~Laundry dry cleaning bags or bags sold in packages containing multiple bags intended for use as garbage waste, pet waste, or yard waste bags;~~

~~Product bags.~~

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

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

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

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

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

11 **H. Product bag.** Any bag provided to a customer for use within a retail establishment to
12 assist in the collection or transport of products to the point of sale within the retail
13 establishment or to protect a specific single purchased item for transport. A product bag is
14 not a carryout bag.

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

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

19 **J. Retail establishment.** Any store or vendor located within or doing business within the
20 geographical limits of the City that sells or offers for sale goods at retail.

21 **K. Reusable bag.** A bag made of cloth or other material with handles that is specifically
22 designed and manufactured for long term multiple reuse and meets all of the following
23 requirements:

- 24 a. If made of natural or synthetic fabric, is washable or otherwise able to be sanitized; or
- 25 b. If plastic, has a minimum plastic thickness of 4.0 mils.

26 **L. Single-use plastic carryout bag.** Any plastic carryout bag made available by a retail
27 establishment to a customer at the point of sale. It does not include reusable bags,
28 recyclable paper bags, or product bags.

29 **M. Vendor.** Any retail establishment, shop, restaurant, sales outlet or other commercial
30 establishment located within or doing business within the geographical limits of the City,

1 which provides perishable or nonperishable goods for sale to the public.

2 ~~N. Undue hardship. Circumstances or situations unique to the particular retail~~
3 ~~establishment such that there are no reasonable alternatives to single-use plastic carryout~~
4 bags or a recyclable paper bag pass-through cannot be collected.

5 **9.21.020 Regulations**

6 ~~A. No retail establishment shall provide or make available to a customer a single-use~~
7 ~~plastic carryout bag,~~

8 ~~B. Retail establishments that choose to provide customers a paper bag at the point of sale~~
9 ~~must provide a recyclable paper bag meeting or exceeding the minimum standards defined~~
10 ~~in 9.21.010.I.~~

11 ~~C. No person shall distribute a single-use plastic carryout bag at any city facility, city~~
12 ~~managed concession, city sponsored event, or city special events permit activity.~~

13 **9.21.030 Cost Pass Through**

14 ~~A. When a retail establishment makes a recyclable paper bag available to a customer at~~
15 ~~the point of sale pursuant to section 9.21.040.B of this code, the retail establishment shall:~~

- 16 ~~1. Charge the customer a reasonable pass-through cost of not less than 10 cents per~~
17 ~~recyclable paper bag provided to the customer; and~~
- 18 ~~2. Indicate on the customer's transaction receipts the total amount of the recyclable~~
19 ~~paper bag pass-through charge.~~

20 ~~B. The City will evaluate the impact of the charge for paper bags established in section~~
21 ~~9.21.030A.1 of this code in January, 2016.~~

22 **9.21.040 Exemptions**

23 ~~Notwithstanding sections 9.21.020 and 9.21.030 of this code:~~

24 ~~A. Single-use plastic carryout bags may be distributed to customers by food providers~~
25 ~~for the purpose of safeguarding public health and safety during the transportation of hot~~
26 ~~prepared take-out foods and prepared liquids intended for consumption away from the~~
27 ~~food provider's premises.~~

28 ~~B. Retail establishments may distribute product bags and make reusable bags available to~~
29 ~~customers whether through sale or otherwise.~~

30 ~~C. A retail establishment shall provide a reusable bag or recyclable paper bag at no cost at~~

1 ~~the point of sale upon the request of a customer who uses a voucher issued under the~~
2 ~~Women, Infants and Children Program established in the Oregon Health Authority under~~
3 ~~ORS 409.600.~~

4 ~~D. Vendors at retail fairs such as a farmer's market or holiday fair are not subject to~~
5 ~~indicating on the customer's transaction receipt the total amount of the recyclable paper~~
6 ~~bag pass-through charge required in section 9.21.030.B of this code.~~

7 ~~E. The City administrator or the designee may exempt a retail establishment from the~~
8 ~~requirement set forth in sections 9.21.020 and 9.21.030 of this code for a period of not more~~
9 ~~than one year upon the retail establishment showing, in writing, that this code would create~~
10 ~~an undue hardship or practical difficulty not generally applicable to other persons in~~
11 ~~similar circumstances. The decision to grant or deny an exemption shall be in writing, and~~
12 ~~the City administrator's or designee decision shall be final.~~

13 **SECTION 2.** New Chapter 9.21, is hereby added to the Ashland Municipal Code as follows:

14 **9.21.020 Definitions**

15 **A. "Garment bag"** means a large bag that incorporates a hanger on which garments may
16 be hung to prevent wrinkling during travel or storage.

17 **B. "Recycled paper checkout bag"** means a paper bag that contains at least 40 percent
18 post-consumer recycled fiber.

19 **C. "Restaurant"** means an establishment where the primary business is the preparation of
20 food or drink:

21 **1. For consumption by the public;**

22 **2. In a form or quantity that is consumable then and there, whether or not it is**
23 **consumed within the confines of the place where prepared; or**

24 **3. In consumable form for consumption outside the place where prepared.**

25 **D. "Retail establishment"** means a store that sells or offers for sale goods at retail and that
26 is not a restaurant.

27 **E. "Reusable fabric checkout bag"** means a bag with handles that is specifically designed
28 and manufactured for multiple reuse and is made of cloth or other machine-washable
29 fabric.

1 F. “Reusable plastic checkout bag” means a bag with handles that is specifically designed
2 and manufactured for multiple reuse and is made of durable plastic that is at least four (4)
3 mils thick.

4 G. “Single-use checkout bag” means a bag made of plastic, paper, or any other material
5 that is provided by a retail establishment to a customer at the time of checkout, and that is
6 not a recycled paper checkout bag, a reusable fabric checkout bag, or a reusable plastic
7 checkout bag. “Single-use checkout bag” does not mean:

8 1. A bag that is provided by a retail establishment to a customer at a time other than
9 the time of checkout, including but not limited to bags provided to:

- 10 a. Package bulk items such as fruit, vegetables, nuts, grains, greeting cards, or small
11 hardware items, including nails, bolts, or screws;
- 12 b. Contain or wrap frozen food, meat, fish, flowers, a potted plant or another item
13 for the purpose of addressing dampness or sanitation;
- 14 c. Contain unwrapped prepared food or a bakery good; or
- 15 d. Contain a prescription drug.

16 2. A newspaper bag, door hanger bag, garment bag, laundry bag, or dry cleaning
17 bag; or

18 3. A bag sold in a package containing multiple bags for uses such as food storage,
19 garbage containment or pet waste collection.

20 **9.21.040 Regulations**

21 A. Except as provided in subsection B of this section, a retail establishment may not
22 provide:

23 1. Single-use checkout bags to customers.

24 2. Recycled paper checkout bags, reusable fabric checkout bags, or reusable plastic
25 checkout bags to customers unless the retail establishment charges not less than ten (10)
26 cents for each recycled paper checkout bag, reusable fabric checkout bag, or reusable
27 plastic checkout bag.

28 B. A retail establishment may provide:

29 1. Reusable fabric checkout bags at no cost to customers as a promotion on twelve (12)
30 or fewer days in a calendar year.

1 **2. Recycled paper checkout bags or reusable plastic checkout bags at no cost to**
2 **customers who:**

- 3 **a. Use a voucher issued under the Women, Infants and Children Program**
4 **established under ORS 413.500.**
- 5 **b. Use an electronic benefits transfer card issued by the Department of Human**
6 **Services.**

7 **C. Except as provided in subsection D of this section, a restaurant may not provide:**

- 8 **1. Single-use checkout bags to customers.**
- 9 **2. Reusable plastic checkout bags to customers unless the restaurant charges not less**
10 **than ten (10) cents for each reusable plastic checkout bag.**

11 **D. A restaurant may provide:**

- 12 **1. Recycled paper checkout bags at no cost to customers.**
- 13 **2. Reusable plastic checkout bags at no cost to customers who use an electronic benefits**
14 **transfer card issued by the Department of Human Services.**

15 **9.21.090 Violations; Penalties**

16 **A. It shall be unlawful for a restaurant or retail establishment to provide checkout bags to**
17 **customers in violation of section 9.21.040.**

18 **B. A violation of subsection A of this section by a restaurant or retail establishment is a**
19 **Class IV violation. Each day that a restaurant or retail establishment commits a violation**
20 **of subsection A of this section constitutes a separate violation.**

21 **SECTION 3. Codification.** In preparing this ordinance for publication and distribution, the
22 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within
23 such limitations, may:

- 24 (b) Renumber sections and parts of sections of the ordinance;
- 25 (b) Rearrange sections;
- 26 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 27 (d) Delete references to repealed sections;
- 28 (e) Substitute the proper subsection, section, or chapter numbers;
- 29 (f) Change capitalization and spelling for the purpose of uniformity;
- 30 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- (h) Correct manifest clerical, grammatical, or typographical errors.

SECTION 4. Severability. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

PASSED by the City Council this _____ day of _____, 2020.

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this _____ day of _____, 2020.

John Stromberg, Mayor

Reviewed as to form:

Katrina L. Brown, Assistant City Attorney

Enrolled
House Bill 2509

Sponsored by Representatives PILUSO, SOLLMAN, GORSEK, RAYFIELD, Senators DEMBROW, HASS; Representatives GOMBERG, KENY-GUYER, MCKEOWN, MCLAIN, MITCHELL, NERON, NOSSE, SANCHEZ, SCHOUTEN, SMITH WARNER, WILDE, Senator MONNES ANDERSON (Presession filed.)

CHAPTER

AN ACT

Relating to checkout bags; creating new provisions; and repealing ORS 459A.695.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this section and sections 2, 3 and 5 of this 2019 Act:

- (1) "Garment bag" means a large bag that incorporates a hanger on which garments may be hung to prevent wrinkling during travel or storage.
- (2) "Local provision" means a charter provision, ordinance, resolution or other provision adopted by a city, county or other local government, as defined in ORS 174.116.
- (3) "Recycled paper checkout bag" means a paper bag that contains at least 40 percent post-consumer recycled fiber.
- (4) "Restaurant" means an establishment where the primary business is the preparation of food or drink:
 - (a) For consumption by the public;
 - (b) In a form or quantity that is consumable then and there, whether or not it is consumed within the confines of the place where prepared; or
 - (c) In consumable form for consumption outside the place where prepared.
- (5) "Retail establishment" means a store that sells or offers for sale goods at retail and that is not a restaurant.
- (6) "Reusable fabric checkout bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine-washable fabric.
- (7) "Reusable plastic checkout bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of durable plastic that is at least four mils thick.
- (8)(a) "Single-use checkout bag" means a bag made of paper, plastic or any other material that is provided by a retail establishment to a customer at the time of checkout, and that is not a recycled paper checkout bag, a reusable fabric checkout bag or a reusable plastic checkout bag.
 - (b) "Single-use checkout bag" does not mean:
 - (A) A bag that is provided by a retail establishment to a customer at a time other than the time of checkout, including but not limited to bags provided to:
 - (i) Package bulk items such as fruit, vegetables, nuts, grains, greeting cards or small hardware items, including nails, bolts or screws;

- (ii) Contain or wrap frozen food, meat, fish, flowers, a potted plant or another item for the purpose of addressing dampness or sanitation;
 - (iii) Contain unwrapped prepared food or a bakery good; or
 - (iv) Contain a prescription drug;
- (B) A newspaper bag, door hanger bag, garment bag, laundry bag or dry cleaning bag; or
- (C) A bag sold in a package containing multiple bags for uses such as food storage, garbage containment or pet waste collection.

SECTION 2. (1) Except as provided in subsection (2) of this section, a retail establishment may not provide:

- (a) Single-use checkout bags to customers.
 - (b) Recycled paper checkout bags, reusable fabric checkout bags or reusable plastic checkout bags to customers unless the retail establishment charges not less than five cents for each recycled paper checkout bag, reusable fabric checkout bag or reusable plastic checkout bag.
- (2) A retail establishment may provide:
- (a) Reusable fabric checkout bags at no cost to customers as a promotion on 12 or fewer days in a calendar year.
 - (b) Recycled paper checkout bags or reusable plastic checkout bags at no cost to customers who:
- (A) Use a voucher issued under the Women, Infants and Children Program established under ORS 413.500.
- (B) Use an electronic benefits transfer card issued by the Department of Human Services.

- (3) Except as provided in subsection (4) of this section, a restaurant may not provide:
- (a) Single-use checkout bags to customers.
 - (b) Reusable plastic checkout bags to customers unless the restaurant charges not less than five cents for each reusable plastic checkout bag.
- (4) A restaurant may provide:
- (a) Recycled paper checkout bags at no cost to customers.
 - (b) Reusable plastic checkout bags at no cost to customers who use an electronic benefits transfer card issued by the Department of Human Services.

SECTION 3. To prohibit or limit the use of recycled paper checkout bags, reusable fabric checkout bags, reusable plastic checkout bags or single-use checkout bags by a restaurant or retail establishment, a city, county or other local government, as defined in ORS 174.116:

- (1) May adopt a local provision that establishes definitions, requirements and restrictions that are identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.
- (2) May amend a local provision that was in effect before the effective date of this 2019 Act so the local provision establishes definitions, requirements and restrictions that are identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.
- (3) May adopt, amend or enforce a local provision to impose a penalty other than the penalty established by section 4 of this 2019 Act. A restaurant or retail establishment may be charged with a violation under either the local provision or section 4 of this 2019 Act, but not both.
- (4) May not adopt or enforce a local provision that establishes definitions, requirements or restrictions that are not identical to the definitions, requirements and restrictions established by sections 1 and 2 of this 2019 Act.
- (5) Notwithstanding subsection (4) of this section, may adopt, amend or enforce a local provision to require a restaurant or retail establishment to charge a fee of more than five cents under provisions otherwise identical to section 2 (1)(b) and (3)(b) of this 2019 Act.

SECTION 4. (1) Notwithstanding ORS 153.018 (3), a violation of section 2 of this 2019 Act by a restaurant or retail establishment, as those terms are defined in section 1 of this 2019 Act, is a Class D violation subject to a maximum fine of \$250.

(2) Each day that the restaurant or retail establishment commits a violation constitutes a separate offense.

SECTION 5. (1) The Department of Environmental Quality shall produce a report on the impacts of sections 2 and 3 of this 2019 Act that assesses, in retail establishments that primarily sell groceries:

(a) Collection of the fee described in section 2 (1)(b) of this 2019 Act; and

(b) Customers' use of recycled paper checkout bags, reusable fabric checkout bags and reusable plastic checkout bags.

(2) No later than September 15, 2024, retail establishments that primarily sell groceries shall provide to the department the information described in subsection (1) of this section.

(3) No later than September 15, 2025, the department shall submit the report described in subsection (1) of this section, in the manner provided by ORS 192.245, to an interim committee of the Legislative Assembly related to the environment.

SECTION 6. Section 5 of this 2019 Act is repealed on December 31, 2025.

SECTION 7. ORS 459A.695 is repealed.

Passed by House April 25, 2019

Received by Governor:

.....M.,....., 2019

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Timothy G. Sekerak, Chief Clerk of House

Approved:

.....M.,....., 2019

Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 11, 2019

Filed in Office of Secretary of State:

.....M.,....., 2019

Peter Courtney, President of Senate

Bey Clarno, Secretary of State

Bev Clarno, Secretary of State