

AN ORDINANCE  
AMENDING THE ELGIN MUNICIPAL CODE TO PROVIDE FOR A NEW CHAPTER 6.05  
ENTITLED “RETAIL SINGLE-USE BAGS”

WHEREAS, the City of Elgin (the “City”) intends to preserve, maintain, and enhance the health of its residents and visitors, as well as the public natural resources and common property within the City, by regulating the distribution of single-use bags within the City; and

WHEREAS, the City has determined that to discourage and decrease the use of single-use bags within the City, it is necessary to regulate such use; and

WHEREAS, such regulation is intended to reduce the use of single-use bags by retail establishments within the City; curb litter on the City’s streets and parks and in trees; protect the local streams, creeks, rivers, waterways and other aquatic environments; reduce greenhouse gas emissions; reduce solid waste generation; promote the use of reusable, compostable and recyclable materials within the City; and preserve the natural, scenic, historic, and aesthetic values of the City; and

WHEREAS, there are numerous retail establishments within the City that provide single-use bags to their customers; and

WHEREAS, most of such single-use bags are made of plastic or other material that does not readily decompose; and

WHEREAS, approximately one hundred billion single-use plastic bags are discarded by United States consumers each year; and

WHEREAS, numerous studies have documented the prevalence of single-use bags littering the environment, blocking storm drains, entering local waterways, and becoming stuck in or upon natural resources and public property; and

WHEREAS, recyclers cite single-use plastic bags as a major source of contamination within the recycling stream, leading to increased costs and decreased efficiency; and

WHEREAS, environmental conservation and preservation is one of the City’s core values; and

WHEREAS, the City of Elgin Sustainability Commission has recommended the regulation of single-use bags as a means of reducing waste and other negative effects caused by single-use bags; and

WHEREAS, the Mayor and the City Council of the City have determined that the use of single-use bags within the City needs to be regulated to protect the public health and safety; and

WHEREAS, the City of Elgin is a home rule unit of government, and pursuant to Article VII, Section 6(a) of the Illinois Constitution, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the regulation of the use of single-use bags within the City and the protection of the public health and safety pertain to the government and affairs of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELGIN, ILLINOIS:

Section 1. That foregoing recitals are hereby incorporated into this ordinance as though fully set forth herein.

Section 2. That Title 6 of the Elgin Municipal Code entitled “Business Licenses and Regulations” be and is hereby further amended by adding a new Chapter 6.05 thereto entitled “Retail Single-Use Bags,” to read as follows:

“CHAPTER 6.05 – RETAIL SINGLE-USE BAGS

6.05.010. – Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Consumer* means any person that makes a purchase at retail.

*Employee* means a natural person who is employed by an employer on a full-time (FT) basis and whose primary place of employment is located within the State of Illinois. The term does not include independent contractors, temporary workers, seasonal workers, interns, volunteers, or individuals employed on a part-time, per-diem, or other non-FT basis. For purposes of this definition, “full-time” means employment of not less than 40 hours per week, as determined by the employer’s standard payroll and benefits practices.

*Person* means an individual, natural person, public or private corporation, partnership, company, business, trust, government entity, unincorporated association, club, organization, or any other entity; or the manager, lessee, agent, servant, officer, or employee of any such entity.

*Plastic* means an organic or petroleum-derived synthetic or semi-synthetic solid material synthesized by the polymerization of organic substances that is moldable into various rigid and flexible forms and to which additives or substances may have been added. *Plastic* does not include natural polymers that have not been chemically modified.

*Primarily engaged in the sale of ready-to-eat food for immediate consumption* means having sales of ready-to-eat food for immediate consumption comprising at least fifty-one percent (51%) of the total sales, excluding sales of liquor.

*Recycled paper bag* means a paper bag that:

- (1) is one hundred percent (100%) recyclable; and
- (2) contains at least forty percent (40%) post-consumer recycled material.

*Restaurant* means any business that is primarily engaged in the sale of ready-to-eat food for immediate consumption.

*Retail mercantile establishment* means a business that makes sales at retail and generates occupation or use tax revenue. *Retail mercantile establishment* does not include a restaurant or a small retail mercantile establishment.

*Reusable Bag* means a bag with threaded stich handles that:

- (1) is specifically designed and manufactured for multiple uses; and
- (2) is capable of carrying twenty-two (22) pounds for a distance of one hundred seventy-five (175) feet; and
- (3) is made of cloth, fiber, or other fabric or recycled material that is machine washable and can be cleaned and disinfected regularly.

*Single-use checkout bag* means a single-use bag that is provide by a retail mercantile establishment at the checkout, cash register, or point-of-sale to a consumer for the purpose of transporting goods or items out of the retail mercantile establishment, and that is not a recycled paper bag or a reusable bag. *Single-use checkout bag* does not include:

- (1) a bag that is used to package bulk items, such as fruit, vegetables, nuts, grains, or candy;
- (2) a bag that is used for greeting cards, balloons, or small hardware items, such as nails and bolts;
- (3) a bag that is used to contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- (4) a bag that is used to contain or wrap flowers or potted plants or other items where dampness may be a problem;
- (5) a bag that is used to contain unwrapped prepared foods or bakery goods;
- (6) a bag that is used to contain prescription drugs;
- (7) a bag that is sold in packages containing multiple bags intended for use as garbage bags, pet waste bags, or yard waste bags;
- (8) a bag that is brought to a store by the consumer for the consumer's own use or to carry away from the store goods that are not placed in a bag provided by the store;
- (9) a bag that is provided by a dine-in or take-out restaurant to contain food or drink purchased by the restaurant's consumers;

- (10) a bag containing a plastic liner that is permanently affixed, or designed and intended to be permanently affixed, to the inside of the particular bag;
- (11) a newspaper bag, door-hanger bag, laundry cleaning bag, garment bag; or
- (12) a bag that is used for online or digital orders where an employee of the retail mercantile establishment packages the goods for curbside pick-up or delivery.

*Small retail mercantile establishment* means a retail mercantile establishment that (i) has twelve (12) or fewer locations in the State of Illinois and employs two hundred fifty (250) or fewer employees in the United States or (ii) is a retailer, as defined under the Motor Fuel and Petroleum Standards Act, and occupies less than five thousand (5,000) square feet.

#### 6.05.020. – Single-Use Checkout Bag Prohibition.

A retail mercantile establishment shall not offer a single-use checkout bag to consumers at the point of sale or otherwise make a single-use checkout bag available to consumers. A retail mercantile establishment may offer a recycled paper bag or reusable bag to consumers.

#### 6.05.030. – Recycled Paper Bag Fee.

- A. If a retail mercantile establishment offers a recycled paper bag to consumers, the retail mercantile establishment shall charge a fee of at least ten cents (\$0.10) per recycled paper bag offered to a consumer.
- B. All amounts collected pursuant to this section may be retained by the retail mercantile establishment and may be used for any lawful purpose.
- C. A retail mercantile establishment may not rebate or otherwise reimburse a consumer any portion of the fee charged under this section.
- D. The fee imposed under this section does not apply to recycled paper bags that are used to carry items purchased pursuant to the Supplemental Nutrition Assistance Program, the special supplemental nutrition program for Women, Infants, and Children, or a similar governmental food assistance program.

#### 6.05.040. – Educational Material and Signage.

- A. Every retail mercantile establishment subject to the single-use checkout bag prohibition and collection of the recycled paper bag fee shall conspicuously display a sign in a location outside or inside of the establishment, viewable by consumers, alerting consumers to the city's single-use checkout bag prohibition and recycled paper bag fee.
- B. The city may develop educational and promotional material, including a sign that complies with subsection (a) of this section, regarding the city's single-use checkout bag prohibition and recycled paper bag fee. The city shall make any such

material available on the city website for use by retail mercantile establishments that are subject to the requirements of this chapter.

6.05.050. – Reusable Bags.

- A. A retail mercantile establishment may provide reusable bags to its consumers for the purpose of enabling the consumer to carry away goods from the point of sale. The fee imposed pursuant to section 6.05.030 of this chapter shall not apply to reusable bags.
- B. Nothing in this chapter shall be construed to prohibit a retail mercantile establishment from allowing consumers to bring to the retail mercantile establishment reusable bags for the consumer's own use or from carrying away goods from the retail mercantile establishment that are not placed in a bag provided by the retail mercantile establishment.

6.05.060. – Penalties.

- A. In the case of a first violation of this chapter by a retail mercantile establishment, the establishment shall be issued a notice of violation notifying the establishment of the violation of this chapter and advising that any subsequent violations will result in further enforcement of this chapter, including the enforcement of any applicable penalties.
- B. If, after the issuance of a notice of violation pursuant to subsection 6.05.060.A, a retail mercantile establishment violates any of the provisions or fails to comply with any of the mandatory requirements of this chapter, such violation or failure shall constitute an offense. For any person or establishment found to have committed an offense under this chapter, the fines shall be as follows:
  - 1. The first offense shall be punished by a fine of not less than two hundred fifty dollars (\$250.00);
  - 2. The second offense shall be punished by a fine of not less than five hundred dollars (\$500.00);
  - 3. The third and any subsequent offenses within any twenty-four (24) month period shall be punished by a fine of not less than seven hundred fifty dollars (\$750.00).
- C. Each day that a violation under this chapter continues to exist shall constitute a separate and distinct offense.
- D. The penalties provided in this section 6.05.060 are in addition to any penalties, injunctions, or other legal or equitable relief provided under any other law. Nothing in this chapter shall bar a cause of action by the city for any other penalty, injunction, or other legal or equitable relief provided by any other law.

6.05.070. – Books and Records.

Every retail mercantile establishment shall be required to collect the fee imposed pursuant to this chapter and shall keep accurate books and records of its business, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the fee being imposed. Each retail establishment must preserve for three (3) years all records necessary to determine the amount of the fees collected under this chapter. All such books and records shall be subject to and available for inspection by the city during regular business hours.

6.05.080. – Preemption by State Law.

The provisions of this chapter shall be subject to any conflicting provisions of state law that preempt the city’s home rule authority with respect to such provisions.”

Section 3. That all ordinances or parts of ordinance in conflict with the provisions of this ordinance be and are hereby repealed to the extent of any such conflict.

Section 4. That this ordinance shall be in full force and effect upon its passage and publication in the manner provided by law.

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David J. Kaptain, Mayor

Presented:

Passed:

Vote: Yeas      Nays:

Recorded:

Published:

Attest:

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Kimberly A. Dewis, City Clerk