

Ordinance No. 378-2020

Council Members Kelley and Zone

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 236.01 through 236.03 and 236.99, related to single-use carryout bags.

WHEREAS, this Council believes it has a duty to protect the natural environment and the health and welfare of this City's citizens and visitors; and

WHEREAS, the use of single-use carryout bags has severe environmental impacts on both a local and a global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption, and solid waste generation; and

WHEREAS, despite recycling and voluntary solutions to control pollution from single-use carryout bags, many single-use carryout bags ultimately end up in landfills, litter the environment, block storm drains, and endanger wildlife; and

WHEREAS, the City's taxpayers must bear the costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and

WHEREAS, this Council believes that by using reusable bags, consumers will conserve resources, reduce greenhouse gas emissions, waste, and litter, and will protect the health and welfare of wildlife and the public; and

WHEREAS, this Council believes that prohibiting the free distribution of single-use carryout bags by retail establishments is reasonable and will help motivate consumers to use reusable bags; and

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of public peace, property, health, or safety, in that it is in the best interests of the people of this City to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by reducing the distribution of single-use carryout bags by retail establishments which will in turn motivate people to use reusable bags; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 236.01, 236.02, 236.03 and 236.99 to read, respectively, as follows:

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Section 236.01 Definitions

As used in this chapter:

(a) “Single-use carryout bag” means a bag other than a reusable bag that is provided by a retail establishment at the check stand, cash register, point of sale or other point of departure to a customer for the purpose of transporting food or merchandise out of the establishment, or to deliver food or merchandise to a customer outside of the retail establishment. Single-use carryout bag includes compostable and biodegradable bags.

Single-use carryout bags do *not* include:

(1) reusable bags;

(2) any bag without handles used exclusively by customers to package items such as meat, fish, fruit, vegetables, nuts, grains, candy, bakery goods, greeting cards, jewelry, small hardware items such as nails or bolts, or to contain or wrap flowers or plants;

(3) bags used by food vending trucks or temporary event food vendors;

(4) bags used at farmers markets;

(5) bags used by organizations which receive them second hand and reuse them for distribution;

(6) a non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag;

(7) bags provided by pharmacists to contain prescription drugs; and

(8) newspaper bags, door-hanger bags, laundry dry-cleaning bags, or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.

(b) “Reusable bag” means a bag that:

(1) is designed and manufactured to withstand repeated uses over a period of time;

(2) is machine washable or made from a material that can be cleaned and disinfected regularly;

(3) is at least 2.25 milliliters thick if made from plastic;

(4) has a minimum lifetime of 75 uses; and

(5) has a capability of carrying a minimum of 18 pounds.

(c) “Retail establishment” means any person, corporation, partnership, business venture, public sports or entertainment facility, government agency, or organization that sells or provides merchandise, goods, or materials including, without limitation, food, clothing, beverages, household goods, or personal items of any kind directly to a customer. Retail establishment includes department stores, clothing stores, jewelry stores, grocery stores, restaurants, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations and temporary vendors of merchandise at street fairs, flea markets and festivals. Retail establishment does not include food banks and other food assistance programs.

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Section 236.02 Single-Use Carryout Bags Prohibited; Exemption

(a) *Prohibition.* Beginning September 1, 2020, no retail establishment shall provide to customers single-use carryout bags for the purpose of carrying food or merchandise from the retail establishment, or to deliver food or merchandise to a customer outside of the retail establishment. Retail establishments shall offer to customers only reusable bags at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment, or to deliver food or merchandise to a customer outside of the retail establishment.

(b) *Exemption.* A retail establishment that offers for purchase single-use carryout bags at a cost of no more than \$0.05 per bag is exempt from the prohibition of this section. A retail establishment shall not charge the cost of a single-use carryout bag to a customer who provides evidence that the customer is a participant in a federal or state food assistance program.

(c) Retail establishments shall record the number of single-use carryout bags purchased and the total cost on the customer transaction receipt.

Section 236.03 Record Keeping

(a) Every retail establishment shall keep complete and accurate records of the number of single-use carryout bags purchased by customers for a period of three (3) years from the end of the calendar year of the records.

(b) Beginning March 1, 2021 and on March 1 every year thereafter, a retail establishment shall submit to the Director, on a form established by the Director, the information referred to in division (a) of this section.

Section 236.99 Civil Penalty

(a) Beginning January 1, 2021, any retail establishment that provides to customers single-use carryout bags in violation of Section 236.02 shall pay a civil fine of \$100 per violation. Each day a violation continues is a separate violation.

(b) The Director of Public Health or designee shall have the authority to charge the civil fines set forth in this section. All civil fines collected pursuant to this chapter shall be deposited in the Tree Preservation Fund, established under Section 509.21 of the Codified Ordinances, for the purpose of supporting the preservation, protection, maintenance, purchase and planting of trees in the City.

(c) A retail establishment that receives a civil fine under this section may appeal to the Director within ten (10) business days of the date of the notice of the civil fine. The Director shall have jurisdiction to affirm, reverse, or modify the decision and shall do so within ten (10) days of the date of the appeal. A person aggrieved by a final decision of the Director may further appeal to the Board of Zoning Appeals within thirty (30) days after the Director's decision

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

KJK:rns
3/23/2020

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REPORT
after Second Reading

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READ FIRST TIME on MARCH 23, 20230
and referred to DIRECTORS of Public Health, Finance, Law;
COMMITTEES on Health and Human Services, Finance

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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PASSAGE RECOMMENDED BY
COMMITTEE ON
HEALTH AND HUMAN SERVICES

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE

FILED WITH COMMITTEE