

ORDINANCE 1678

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, ADOPTING A NEW CHAPTER 8.42 OF THE NORTH BEND MUNICIPAL CODE RELATING TO RETAIL CARRYOUT BAGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, single-use plastic bags do not biodegrade, but instead break down into smaller and smaller pieces that are often consumed by fish and marine animals, and birds; and

WHEREAS, single-use plastic bags can contribute to plastic litter within the City of North Bend (“City”) and especially within the aquatic environment; and

WHEREAS, it is in the interest of the community and the environment for the City to promote the use of reusable carryout bags as the best alternative to single-use plastic bags;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. New NBMC Chapter 8.42 (Retail Carryout Bags), Adopted: A new North Bend Municipal Code Chapter 8.42 (Retail Carryout Bags) is hereby adopted to read as follows:

Sections:

- 8.42.010 Definitions.
- 8.42.020 Prohibition on disposable plastic carryout bags.
- 8.42.030 Recycled paper bag pass-through charge.
- 8.42.040 Enforcement and penalties.
- 8.42.050 No conflict with federal or state law.
- 8.42.060 Phased implementation.

8.42.010 Definitions.

A. “Carryout bag” means a 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, goods or merchandise out of the establishment. Carryout bags do not include: (1) bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items, such as nails and bolts, or to contain or wrap frozen foods, meat or fish, whether prepackaged or not,

or to contain or wrap flowers or potted plants, or other items where dampness may be a problem, or to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs, or to safeguard public health and safety during the transportation of prepared take-out foods intended for consumption away from the retail establishment; or (2) newspaper bags, door-hanger bags, laundry/dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

B. "Recyclable paper bag" means a paper carryout bag that meets the following requirements: (1) contains a minimum average of 40 percent post-consumer recycled materials, (2) the paper carryout bag is accepted for recycling in the City's recycling and composting program and (3) displays the minimum percent of post-consumer content on the outside of the bag.

C. "Retail establishment" means any person, corporation, partnership, business venture, public sports or entertainment facilities, government agency, street vendor or vendor at public events or festivals or organizations that sell or provide merchandise, goods or materials including, without limitation, clothing, food, beverages, household goods, or personal items of any kind directly to a customer. Examples include but are not limited to: department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, restaurants, food vending trucks, farmers markets, and temporary vendors of food and merchandise at street fairs and festivals. Food banks, food assistance programs and organizations providing services specifically for low-income households are not considered to be retail establishments for the purposes of this chapter.

D. "Disposable plastic carryout bag" means any carryout bag made from plastic or bioplastic, including materials marketed or labeled "biodegradable" or "compostable," that is not a reusable bag.

E. "Reusable bag" means a bag made of cloth, fabric or other material with handles that is specifically designed and manufactured for long-term multiple reuse and meets all of the following requirements:

1. Has a minimum lifetime of 125 uses, which, for the purposes of this section, means the capability of loading, carrying and unloading a minimum of 22 pounds over a distance of at least 175 feet a minimum of 125 times;
2. Is washable, whether by machine or hand;
3. If made of plastic, meets all of the requirements above and is a minimum of 2.25 mils thick.

8.42.020 Prohibition on disposable plastic carryout bags.

No retail establishment in the City, or any of its employees, managers or owners, shall provide a disposable plastic carryout bag to any customer.

8.42.030 Recyclable paper bag.

A. No retail establishment in the City shall provide a paper carryout bag with a manufacturer’s stated capacity of one-eighth barrel (882 cubic inches) or larger that is not a recyclable paper bag.

B. A retail establishment in the City may impose a fee or charge not to exceed \$0.05 for each bag to a customer to provide a paper carryout bag as an alternative to a disposable plastic carryout bag.

C. A retailer may not collect a pass-through charge from anyone with a voucher or electronic benefits card issued under programs including, without limitation, Women Infants and Children; Temporary Assistance to Needy Families; Federal Supplemental Nutrition Assistance Program (Basic Food); and the Washington State Food Assistance Program.

8.42.040 Enforcement and penalties.

A. Any person who violates any of the provisions of this chapter shall be cited and liable as set forth in Chapter 1.20 NBMC; provided, however, that the City Code Enforcement Officer shall instead issue a written warning to any person he determines is violating any provision of this chapter when such violation is the first instance of noncompliance known to the Code Enforcement Officer. If after issuing a written warning, the Code Enforcement Officer becomes aware of subsequent noncompliance, they shall apply for or impose the sanctions described in this section.

B. Any person may request a temporary waiver from the requirements of this chapter by filing a request with the City Administrator or designee. The City Administrator or designee may waive any specific requirement of this chapter for a period of up to 12 months if the person seeking the waiver has shown that strict application of the specific requirement would create an undue hardship, practical difficulty or other material concern not generally applicable to other persons or retail establishments in similar circumstances. The City Administrator’s or designee’s decision to grant or deny a waiver shall be in writing, shall be final and not subject to appeal.

8.42.050 No conflict with federal or state law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

8.42.060 Implementation.

Retail establishments shall have until July 1, 2019, to comply with the provisions of this chapter.

Section 2. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 4TH DAY OF DECEMBER, 2018.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: December 14, 2018
Effective: December 19, 2018

Susie Oppedal, City Clerk