

**ORDINANCE O-17-15**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING CHAPTER 9, HEALTH AND SANITATION, OF THE CITY CODE OF THE CITY OF BISBEE, BY AMENDING ARTICLE 9.7, REGULATION OF CARRYOUT BAGS, AND PROVIDING FOR REPEAL AND SEVERABILITY.**

**WHEREAS**, the Mayor and Council enacted Ordinance O-13-14, effective on Earth Day, 2014, prohibiting retailers from providing customers with single-use plastic bags; and

**WHEREAS**, Ordinance O-13-14 proved very effective for the purposes intended; and

**WHEREAS**, notwithstanding the effectiveness of the Ordinance, the Legislature enacted A.R.S. § 9-500.38, which prohibits cities from enacting and maintaining such ordinances; and

**WHEREAS**, the Legislature also enacted SB1487, allowing a single legislator to file a complaint with the Attorney General, which initiates an investigation by the Attorney General to determine if a local law violates State law; and in the event that the Attorney General makes such a determination, the result is that a city will lose its State shared revenue if it does not bring its challenged law into compliance; and

**WHEREAS**, on September 28, 2017, Senator Warren Petersen (Mesa) filed a request with the Attorney General to investigate Ordinance O-13-14 to determine its validity; and

**WHEREAS**, on October 10, 2017, the City Attorney submitted a response to the Attorney General, defending the validity of Ordinance O-13-14; and

**WHEREAS**, on October 24, 2017, the Attorney General rendered its opinion, determining that Bisbee's plastic bag ban ordinance violates State law; and

**WHEREAS**, in order to avoid losing its State shared revenue, the Mayor and Council have determined to eliminate the mandatory nature of the plastic bag ban and instead make it voluntary; and

**WHEREAS**, these amendments are in the best interests of the City and its citizens and are within the authority granted to the Mayor and Council by Sections 1.03 and 6.02 of the City Charter of the City of Bisbee,

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Bisbee as follows:

Section 1: That Chapter 9, Health and Sanitation, of the City Code of the City of Bisbee, Article 9.7, Regulation of Carryout Bags, is hereby amended as specified in the attached Exhibit A, incorporated herein by reference.

Section 2: Repeal. That Ordinance O-13-14, previously adopting a prior version of Article 9.7, Regulation of Disposable Carryout Bags, is hereby conditionally repealed and Article 9.7 is hereby amended as set forth in this Ordinance; provided, however, that if a court of competent jurisdiction rules that Ordinance O-13-14 is valid and enforceable, then said Ordinance shall be reinstated and shall supersede this amended Article 9.7 at the conclusion of all appeals and the issuance of a mandate in such a case.

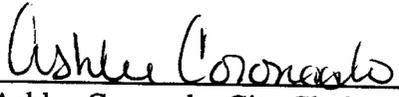
Section 3: Severability. That if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

**PASSED, APPROVED AND ADOPTED** by the Mayor and Council of the City of Bisbee, this 21<sup>st</sup> day of November, 2017.

**APPROVED:**

  
\_\_\_\_\_  
David Smith, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ashlee Coronado, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Britt Hanson, City Attorney

## **EXHIBIT A**

### **AMENDMENT TO CHAPTER 9 OF THE CITY CODE, HEALTH AND SANITATION; AND CEMETERY**

#### **ARTICLE 9.7      REGULATION OF CARRYOUT BAGS**

##### **9.7.1 Findings and Purpose**

The Mayor and Council of the City of Bisbee hereby find that:

- A. The widespread practice by retail stores of supplying disposable carryout bags to their customers results in a significant amount of waste material and creates additional burdens on the City's solid waste collection system, resulting in more costs to the City and its citizens.
- B. Plastic carryout bags in particular result in a significant amount of wind-blown litter throughout our high desert landscape, resulting in visual blight and adverse impacts upon this environment. The fact that these plastic bags do not decompose, but only break down into smaller particles, results in the potential for their chemical components to be ingested or taken up by other organisms, with potentially harmful effects to the natural environment.
- C. Carryout bags that are not properly disposed of can result in clogged sewer lines and otherwise adversely impact the City's sanitary sewer systems and give rise to costly repairs and maintenance of public infrastructure.
- D. The production and delivery of disposable carryout bags consumes a large amount of both renewable and non-renewable resources on an annual basis, and even though these account for only a small percentage of our total national use of oil and natural gas, this usage still constitutes a significant amount of total energy expended on what is essentially waste material.
- E. The amount of waste material being produced, the amount of energy being consumed, and the amount of litter in our local environment will all be reduced if the use of disposable carryout bags in our community is reduced and the use of reusable carryout bags is encouraged.
- F. For that reason, the Mayor and Council enacted Ordinance O-13-14, effective on Earth Day, 2014, prohibiting retailers from providing customers with single-use plastic bags.
- G. Ordinance O-13-14 proved very effective for the purposes intended.
- H. Notwithstanding the effectiveness of the Ordinance, the Legislature enacted A.R.S. § 9-500.38, which prohibits cities from enacting and maintaining such ordinances.
- I. The Legislature also enacted SB1487, allowing a single legislator to file a complaint with the Attorney General, which initiates an investigation by the Attorney General to determine if a local law violates State law; and in the event that the Attorney General makes such a

determination, the result is that a city will lose its State shared revenue if it does bring its challenged law into compliance.

J. On September 28, 2017, Senator Warren Petersen (Mesa) filed a request with the Attorney General to investigate Ordinance O-13-14 to determine its validity.

K. On October 10, 2017, the City Attorney submitted a response to the Attorney General, defending the validity of Ordinance O-13-14.

L. On October 24, 2017, the Attorney General rendered its opinion, determining that Bisbee's plastic bag ban ordinance violates State law.

M. Accordingly, in order to avoid losing its State shared revenue, the Mayor and Council have determined to eliminate the mandatory nature of the plastic bag ban and instead make it voluntary, meaning that the City of Bisbee will take no adverse action (whether zoning, licensing, or otherwise) against any person or entity that chooses to not voluntarily follow these revised provisions.

### 9.7.2 Definitions

A. **"Exempt single-use bags"** include bags made available to consumers inside stores, prior to their arrival at the checkout counter, to be used to package bulk items such as fruit, vegetables, nuts, grains, candy, or small hardware items, such as nails and bolts; to be used to contain or wrap frozen or fresh foods, meat or fish, whether prepackaged or not; to be used to separate flowers or potted plants, or other damp items that may need to be separated from other purchases; to be used to protect or separate prepared foods or bakery goods; to be used by pharmacists to contain prescription drugs; newspaper bags; clothing bags provided by dry cleaners; bags to be used to protect a purchased item from damaging or contaminating other purchased items, when placed in a reusable carryout bag or recycled paper bag; and bags sold in packages containing multiple bags and intended for use outside of the store to contain garbage, pet waste, yard waste or other materials.

B. **"Recycled paper bag"** means a paper carryout bag provided by a retail establishment to a customer at the point of sale that meets all of the following requirements:

1. The bag contains a minimum of forty percent (40%) postconsumer recycled material; or if the bag is rated at eight pounds or less, twenty percent (20%) postconsumer recycled material.
2. The bag is capable of composting, consistent with the time limits and specifications of the American Society of Testing and Material (ASTM) Standard D6400.
3. The bag has printed on the bag the name of the manufacturer, the country were it was manufactured, and the minimum percentage of post-consumer content.

**C. “Retail establishment”** means a licensed business located within the City of Bisbee that provides one or more consumer items to its customers intended for off-site use or consumption. For purposes of this Article, any restrictions imposed upon a “retail establishment” shall be equally applicable to the employees, managers, owners, contractors, and agents of that retail establishment.

**D. “Reusable carryout bag”** means a bag with handles that is specifically designed and manufactured for multiple reuse; is either made of cloth, fiber, or other machine washable fabric, or made of durable plastic material that is at least 2.25 millimeters thick; and does not contain lead, cadmium, or any other heavy metals in toxic amounts.

**E. “Single-use carryout bag”** means a bag of any material, commonly plastic or kraft paper, that is provided to a consumer at the point of sale or checkout counter to carry purchases from the store and that does not meet the requirements of a “reusable carryout bag” as defined in this Article and that is not classified as an “exempt single use bag” in this Article.

**F. “Single-use plastic carryout bag”** means a “single use carryout bag” made from plastic or bioplastic, including such materials marketed or labeled as “biodegradable” or “compostable,” and that is not a reusable carryout bag, a recycled paper bag, or an exempt single-use bag, as those terms are defined in this Article.

### **9.7.3. Carryout Bag Restrictions**

A. On and after November 20, 2017, a retail establishment may, at its option, choose not to provide a single-use carry-out bag to a customer at the point of sale.

B. On and after November 20, 2017, a retail establishment in the City of Bisbee may, at its option, choose not to provide a single use plastic carryout bag to a customer.

C. A retail establishment in the City of Bisbee may provide reusable carryout bags to customers at no cost or for a fee.

D. On and after November 20, 2017, a retail establishment may provide a customer with one or more recycled paper bags upon request by the customer, and may, if it so chooses, make such bags available at a reasonable fee as determined by the retail establishment, charged to the customer and collected by the retail establishment, unless that customer is exempt from this fee, pursuant to this Article.

E. Customers who are making purchases as participants in the supplemental food program for Women, Infants, and Children, (“WIC”) or who are making purchases as participants in the Supplemental Nutrition Assistance Program (“food stamps” or SNAP), or any similar successor low income food assistance programs, shall be exempt from any bag fee for recycled paper bags.