

**CITY OF BINGEN, WASHINGTON**  
**ORDINANCE NO. 2019-09-700**

**AN ORDINANCE ADOPTING BMC CHAPTER 8.22, CHECKOUT BAG REGULATION**

**WHEREAS**, the Bingen City Council believes it necessary to reduce the impacts of single use plastic on the environment; and

**WHEREAS**, the Bingen City Council believes adopting Bingen Municipal Code Chapter 8.22 will make a positive change for the current and future residents of the City of Bingen; and

**NOW THEREFORE**, the City Council of the City of Bingen do ordain as follows:

**Section 1.** Bingen Municipal Code 8.22 is adopted to read as follows:

**Chapter 8.22, Check Out Bag Regulation**

Sections:

- 8.22.010 Purpose.
- 8.22.020 Definitions.
- 8.22.030 Regulations.
- 8.22.040 Violations and Enforcement.
- 8.22.050 Exemptions.
- 8.22.060 Severability

**8.22.010 Purpose.**

The purpose of this ordinance is to reduce the negative impacts to the city and the environment from disposable bags. Single-use plastic bags are damaging to the environment and devastating to wildlife. They do not biodegrade, but rather break down into small particles and enter the food chain through fish, seabirds and other marine life. Recycling of single use plastic bags is no longer available in the city, and their inevitable contamination of other recyclables harms processing machinery and impedes resource recovery and recycling. A ban on single-use plastic carryout bags combined with a nominal charge per checkout bag has been proven in

numerous municipalities to be extremely effective, reducing disposable bag use and encouraging people to bring their own bags when shopping.

**8.22.020 Definitions.**

Except as otherwise expressly declared or clearly apparent from the context in which used, the following definitions shall be applied in construing the provisions of this chapter:

- A. "ASTM Standard" means the current American Society for Testing and Materials (ASTM)'s International D-6400.
- B. "Barrel size paper bag" means a paper carryout bag with approximate dimensions of 12 inches wide × 7 inches deep × 13-18 inches tall or a capacity of 1,100 to 1,600 cubic inches.
- C. "Carryout bag" means any bag that is provided by a retail establishment at home delivery, the check stand, cash register, point of sale, or other point of departure to a customer for use to transport or carry away purchases. Carryout bags do not include:
  - 1. Bags used by consumers inside stores to:
    - a. Package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items such as nails, bolts, or screws;
    - b. Contain or wrap items where dampness or sanitation might be a problem including, but not limited to:
      - i. Frozen foods;
      - ii. Meat;
      - iii. Fish;
      - iv. Flowers; and
      - v. Potted plants;
    - c. Contain unwrapped prepared foods or bakery goods;

- d. Contain prescription drugs; or
  - e. Protect a purchased item from damaging or contaminating other purchased items when placed in a recycled content paper carryout bag or reusable carryout bag; or
2. Newspaper bags, door hanger bags, laundry/dry cleaning bags, or bags sold in packages containing multiple bags for uses such as food storage, garbage, or pet waste.

D. "City" means the city of Bingen, Washington.

E. "Recycled content paper carryout bag" means:

- 1. The paper carryout bag contains at least 40% post-consumer content.
- 2. The paper carryout bag is 100% recyclable, and accepted for recycling in curbside programs in the City.
- 3. The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard.
- 4. The bag does not contain old growth fiber.
- 5. Printed on the paper carryout bag is the name of the manufacturer, the location (country) of the manufacturer, and the minimum percentage of post-consumer content.

- F. "Retail establishment" means any store, shop, vendor, corporation, business, government agency, organization or individual that sells or provides merchandise, goods or materials including without limitation, clothing, food or personal items of any kind directly to the customer. "Retail establishment" includes without limitation, grocery stores, hardware stores, restaurants, home delivery, catering trucks, and street vendors or vendors at public events or festivals or organizations that sell or provide merchandise, goods or materials.
- G. "Reusable carryout bag" means a bag made of cloth or other durable material with handles that is specifically designed and manufactured for long term multiple reuse and meets the following requirements:
1. Has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capacity of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet, and
  2. Is machine washable or made from a durable material that may be cleaned or disinfected.
  3. If made of film plastic:
    - a. Be made from a minimum of forty percent post-consumer recycled material;
    - b. Display the minimum percentage of post-consumer content in print on the exterior of the plastic bag;
    - c. Have a minimum thickness of no less than 2.25 mils; and
    - d. Display wording that the bag is reusable.
- H. "Single-use plastic carryout bag" means any carryout bag under 2.25 mil in thickness and that is made predominantly of plastic derived from petroleum or from bio-based sources. A single-use plastic carryout bag is designed and suitable only to be used once as a carry out bag and disposed. This includes plastic bags labeled "compostable", "biodegradable", or similar

**8.22.030 Regulations.**

- A. Prohibition on Single-use Plastic Carryout Bags. No retail establishment in the City shall provide or make available Single-use Plastic Carryout Bags.
- B. Requirements for paper bags. When a retail establishment makes a barrel sized paper bag or larger available to a customer at the point of sale, the bag shall meet the definition of a “Recycled content Paper Carryout Bag.” For Barrel Size Paper Bags or larger, retail establishments shall charge the customer a reasonable pass-through charge of not less than 10 cents per bag.
1. No store shall rebate or otherwise reimburse a customer any portion of the 10-cent (\$0.10) pass-through charge.
  2. All stores must indicate on the customer receipt the number of bags purchased and the total amount charged for the bags.
  3. All monies collected by a retail establishment under this chapter will be retained by the establishment. The pass-through charge is a taxable retail sale.
- C. Requirements for Reusable Plastic Bags: A Retail establishment may provide to any customer at the point-of-sale a reusable plastic carryout bag as defined in Section G3 above. For each reusable plastic carryout bag provided by the retail establishment, it shall collect a pass-through charge of not less than 10 cents (\$ 0.10).
1. No store shall rebate or otherwise reimburse a customer any portion of the 10-cent (\$0.10) pass-through charge.
  2. All stores must indicate on the customer receipt the number of bags purchased and the total amount charged for the bags.
  3. All monies collected by a retail establishment under this chapter will be retained by the establishment. The pass-through charge is a taxable retail sale.
- D. Exceptions. No retail establishment may collect a pass-through charge from anyone using a voucher or electronic benefits card issued under programs including, but not limited to, Women Infants and Children (WIC); Temporary Assistance to Needy Families (TANF);

Federal Supplemental Nutrition Assistance Program (SNAP), also known as Basic Food; and the Washington State Food Assistance Program (FAP).

**8.22.040 Violations and Enforcement.**

- A. This ordinance shall be in effect as on March 1, 2020.
- B. Any retail establishment that violates or fails to comply with any of the requirements of this chapter after a one-time written warning notice has been issued for that violation shall be guilty of an infraction.
- C. Violations of this chapter shall be deemed a civil infraction and subject to a civil penalty of no less than \$100 per day and no more than \$250 per day.

**8.22.050 Exemptions.**

- A. The City Council may exempt a retail establishment from the requirements of this chapter upon a showing by the establishment that the conditions of this chapter would cause undue hardship. An “undue hardship” shall only be found in circumstances or situations unique to the particular retail establishment such that:
  - 1. There are no reasonable alternatives to single-use plastic carry-out bags; or
  - 2. Compliance with the requirements of this chapter would deprive a person of a legally protected right.

**8.22.60 Severability.**

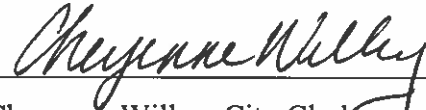
- A. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other circumstances is not affected.
- B. Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BINGEN**, and effective five (5) days after the first date of posting or publication.

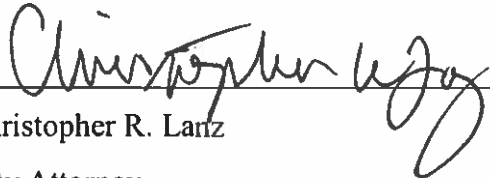
**DATED** this 1<sup>st</sup> day of October, 2019.

ATTEST:

  
\_\_\_\_\_  
Mayor Betty J. Barnes

  
\_\_\_\_\_  
Cheyenne Willey, City Clerk

Approved as to form only:

  
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Christopher R. Lariz  
City Attorney