

**South Portland City Council  
Position Paper of the City Manager**

***Subject:***

**ORDINANCE #3-15/16 – Amending Chapter 9, “Garbage and Refuse”, to add provisions regarding single use carry out bags. First reading. Passage requires majority vote.**

***Position:***

The use of single-use bags contribute to pollution of the land environment creates a burden on solid waste collection and recycling facility and clogs storm drainage systems. Many believe these bags are recyclable and/or biodegradable, making them environmentally friendly. Actually, the opposite is true. Although some bags do get recycled by the limited number of facilities that take the product, many find their way into our landfills, waste-to-energy plants and environment.

In April, the City of Portland implemented its prohibition of single use bags throughout its community. Staff believes consistency is very important when developing and interpreting ordinance language. Adopting an ordinance similar to Portland will provide consistency from one community to the next and have the same rules between the two neighboring communities. I have talked with Portland officials and they are supportive of South Portland basing our ordinance language off from Portland's.

Below I have highlighted points of the Portland Ordinance:

Clear definitions of single-use carryout bag; produce bag or product bag; reusable bag; store; and “store” does not mean.

Store makes available single-use bags for minimum of 5 cents.

Monies collected stays with the store to be used in a lawful purpose.

All stores must post signs indicating the single-use bag charge.

The store needs to separately itemize on the receipt the cost of the single-use bags.

No store can rebate or reimburse the cost of the single-use bag.

The City Manager can approve an exemption on an emergency basis.

The store needs to keep accurate records of the purchase and sale of single-use bags for a minimum of 3 years from the date of purchase and sale. Records are open for inspection by the City. Incomplete documentation is a violation of the ordinance.

City Manager or his/her designee has enforcement and fines ability.

I want to make special note of the definition of single-use carryout bag in the Portland Ordinance. I believe many people think that the Portland Ordinance is specifically geared towards plastic bags; however, the ordinance is much broader and includes the traditional paper bag too. The definition reads: "Single-use carryout bag means a bag other than a reusable bag provided 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. The term single-use carryout bag includes compostable and biodegradable bags but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs.

Also important is what "store" means and does not mean in the ordinance.

**Store.** The term *Store* means any of the following retail establishments located within the City of Portland:

(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.

(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

**"Store" does not mean:** Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business's gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

### **August 10<sup>th</sup> City Council Workshop**

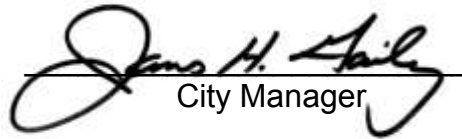
This topic was discussed at the August 10, 2015 workshop. At that meeting, the City Council discussed whether paper bags should be included as trees are a Maine product and biodegradable. This ordinance mirrors Portland's ordinance. If the City Council wants paper bags to be excluded, an amendment would need to be made. Staff has modified the document slightly to reflect Councilor's comments from the workshop. South Portland's ordinance will go into effect on March 1, 2016, allowing time for the City to educate the public and merchants of the provisions of the ordinance. Staff is well underway in developing the education program and upon final action on the 21<sup>st</sup> will be ready to begin the outreach.

During the workshop there was some discussion of whether a one-year check-in would be beneficial. Staff supports this idea as the check-in may provide additional information for Council consideration.

The ordinance is in order for first reading and to set September 21, 2015 for second reading and action.

***Requested Action:***

Council passage of first reading and set September 21, 2015 for second reading and action.

  
City Manager



CITY OF SOUTH PORTLAND

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JAMES H. GAILEY  
City Manager

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City Clerk

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District Five  
BRAD FOX

At Large  
MAXINE BEECHER

At Large  
THOMAS E. BLAKE

**IN CITY COUNCIL**

**ORDINANCE #3-15/16**

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 9, "Garbage and Refuse" of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

**SOUTH PORTLAND CODE OF ORDINANCES**

Chapter 9

**GARBAGE AND REFUSE**

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**ARTICLE VI. SINGLE USE BAGS**

**Sec. 9-745. Findings; purpose.**

WHEREAS, the City Council believes it has a duty to protect the natural environment and the health of its residents and visitors;

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

WHEREAS, the use of single-use plastic bags has significant impacts on the marine and land environment of all coastal communities, including, but not limited to, contributing to the potential death of fish, fowl, and wildlife through ingestion and entanglement and altering marine ecosystems by smothering plants;

WHEREAS, despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled;

WHEREAS, numerous studies have documented the prevalence of single-use carryout bags contributing to pollution of the land environment, creating a burden to solid waste collection and recycling facilities, and clogging storm drainage systems;

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

WHEREAS, the City, through its policies, programs, and ordinances, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy, landfill) and supports efforts to achieve City and State recycling goals;

WHEREAS, from an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping;

WHEREAS, the City Council aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors;

WHEREAS, evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as defined in this Article;

WHEREAS, studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags;

WHEREAS, the City Council believes that residents and visitors should use reusable bags and that the prohibition on free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and

WHEREAS, it is in the best interests of the health, safety and welfare of residents and visitors of South Portland to reduce the cost to the City of solid waste disposal, and to protect the environment and natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Article.

#### **Sec. 9-746. Definitions.**

As used in this Article, the following terms shall have the following meanings:

*Single-use Carryout Bag.* Single-use Carryout Bag means a bag other than a Reusable Bag provided 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. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

Produce Bag or Product Bag. The terms Produce Bag or Product Bag means any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.

Reusable Bag means a bag that:

- (a) is designed and manufactured to withstand repeated uses over a period of time;
- (b) is machine washable or, made from a material that can be cleaned and disinfected regularly;
- (c) is at least 2.25 mil thick if made from plastic;
- (d) has a minimum lifetime of 75 uses; and
- (e) has the capability of carrying a minimum of 18 pounds.

Store. The term Store means any of the following retail establishments located within the City:

- (a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items;  
or
- (b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

Store does not mean businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than two percent (2%) of the business' gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

### **Sec. 9-747. Single-Use Carryout Bag.**

- (a) No Store shall provide a Single-Use Carryout Bag to a customer 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 except as provided in this section.
- (b) A Store may make available for sale to a customer a Single-Use Carryout Bag for a minimum charge of five cents (\$0.05).
- (c) All monies collected by a Store for Single-Use Carryout Bags under this Article may be used by the Store for any lawful purpose.

(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.

(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sales receipt.

(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in subsection (b).

#### **Sec. 9-748.Exemptions.**

A Store shall be exempt from the provisions of this Article in a situation deemed by the City Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

#### **Sec. 9-749.Record Keeping and Inspection.**

Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout Bag for a minimum period of three (3) years from the date of purchase and sale, which records shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information, including incomplete records or documents, to the City shall be a violation of this Article.

#### **Sec. 9-750.Violations and enforcement.**

The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determine(s) that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.

Violations of this Article shall be civil violations punishable by fines as follows:

(a) A fine not exceeding \$250 for the first violation in a one-year period;

(b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

#### **Sec. 9-751.Effective Date.**

The provisions of this Article shall become effective on March 1, 2016.

**Sec. 9-752.Severability.**

If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

Fiscal Note: Less than \$1000

Date: September 9, 2015