

[Ord. No. 1215, § I, 3-26-2019^u]

(a)

Purpose: The purpose of this section is to protect the City's unique natural beauty and irreplaceable natural resources by reducing the number of single-use plastic check-out bags that are distributed in the City of Pittsfield and to promote the use of reusable bags.

(b)

General definitions: The following words shall, unless the context clearly requires otherwise, have the following meanings:

CHECK-OUT BAG

A bag provided by a store to a customer at the point of sale. Check-out bags shall not include bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check-out area of the store

COMPOSTABLE PLASTIC BAG

A plastic bag that (1) conforms to the current ASTM D6400; (2) is certified and labeled as meeting the ASTM D6400 standard specification by a recognized verification entity; and (3) must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds and biomass at a rate consistent with known compostable materials.

ENFORCEMENT AUTHORITY

The Health Department.

RECYCLABLE PAPER BAG

A paper bag that is 100% recyclable and contains at least 40% post-consumer recycled content, and displays in a visible manner on the outside of the bag (1) the word "recyclable" or a symbol identifying the bag as recyclable; and (2) a label identifying the bag as being made from post-consumer recycled content and the percentage of post-consumer recycled content in the bag.

RETAIL ESTABLISHMENT

Any business facility that sells goods directly to the consumer, whether for or not for profit, including, but not limited to, retail stores, restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses.

REUSABLE BAG

A bag with handles that is specifically designed and manufactured for multiple reuse and is either polyester, polypropylene, cotton or other durable material, or durable plastic that is at least 3.0 mils in thickness.

THIN-FILM SINGLE-USE PLASTIC CHECK-OUT BAGS

Those bags typically with handles, constructed of high-density polyethylene (HDPE), low-density polyethylene (LDPE), linear low-density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET), or polypropylene (other than woven and nonwoven polypropylene fabric), if said film is less than 3.0 mils in thickness.

(c)

Regulated conduct:

(1)

No retail establishment shall sell or convey merchandise to consumers in thin-film single-use plastic bags. If a retail establishment provides or sells check-out bags to customers, the bags must be one of the following: recyclable paper bag; reusable check-out bag; or compostable plastic bag.

(2)

A retail establishment that provides any type of Check-out bag may sell them for no less than five cents (\$0.05) per bag. All moneys collected pursuant to this ordinance shall be retained by the retail establishment.

(d)

Exemptions: Subsection **(c)** of this section shall not apply to the following items:

(1)

Thin-film plastic bags typically without handles which are used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items and other similar merchandise are not prohibited under this section.

(e)

Penalties and enforcement.

(1)

If it is determined that a violation has occurred, the Enforcement Authority shall issue a warning notice to the retail establishment for the initial violation.

(2)

If an additional violation of this section has occurred within one year after a warning notice has been issued for an initial violation, the Enforcement

Authority shall issue a notice of violation and shall impose a penalty against the retail establishment.

(3)

The penalty for each violation that occurs after the issuance of the warning notice shall be no more than:

(a)

For the first offense: \$50.

(b)

For the second offense and all subsequent offenses: \$100. Payment of such fines may be enforced through civil action in the state District Court.

(c)

Fines shall be cumulative, and each day on which a violation occurs shall constitute a separate offense.

(4)

Whoever violates any provision of this section may be penalized by a noncriminal disposition as provided in MGL c. 40, § 21D, and City Ordinance Chapter 4 1/2 for noncriminal enforcement. This section shall be enforced by the Enforcing Authority.

(f)

Hardship deferments:

(1)

A review committee shall be established to receive and review deferment request applications and to request and obtain supporting information before referring the request to the Board of Health. The review committee will consist of a member of the Board of Health or its designee, a member of the City Council, and a member of the Green Commission.

(2)

Upon written application from a retail establishment, the Board of Health, or its designee, may temporarily defer application of this section for a period of up to one year upon showing by the retail establishment that the conditions of this section would cause:

(a)

Circumstances or situations unique to the particular retail establishment such that there are no reasonable alternatives to bags that are not recyclable paper bags, compostable plastic bags or reusable bags;

(b)

Circumstances or situations unique to the retail establishment such that compliance with the requirements of this chapter would deprive a person of a legally protected right;

(c)

Circumstances or situations where a retail establishment requires additional time in order to draw down an existing inventory of single-use plastic check-out bags;

(d)

Circumstances or situations where compliance with any section of this section would cause significant economic difficulty and/or undue hardship.

(3)

A deferment granted in accordance with this section may be extended for no more than two additional six-month periods, upon written application to the Board of Health at least two months prior to the expiration of the prior deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

(4)

The Board of Health may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the environment and public health and further the interests of this section.

(5)

Deferment decisions are effective immediately and final.

(g)

Severability and ordinance numbering: Any word, term, or provision declared invalid or unenforceable for any reason may be severed from this section without affecting viability of the whole.

[1]

Editor's Note: This ordinance provided an effective date of 1-1-2020.