

## EXHIBIT "A"

LC 688  
7/9/10 (DLT/ps)

**D R A F T**

## SUMMARY

Prohibits use of single-use checkout bags except in certain cases. Allows Department of Environmental Quality to impose civil penalty. Repeals statute requiring retail establishments that offer plastic bags to customers to also offer paper bags.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to bags; creating new provisions; amending ORS 459.235 and  
3 459A.115; repealing ORS 459A.695; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** As used in sections 1 to 4 of this 2011 Act:

6 (1) "Recycled paper checkout bag" means a paper bag made of at  
7 least 40 percent recycled fiber.

8 (2) "Retail establishment" means any store in this state that sells  
9 or offers for sale goods at retail.

10 (3) "Reusable checkout bag" means a bag with handles that is spe-  
11 cifically designed and manufactured for multiple reuse and is made of:

12 (a) Cloth or other machine-washable fabric; or

13 (b) Durable plastic that is at least 2.25 mils thick.

14 (4)(a) "Single-use checkout bag" means a bag made of paper, plastic  
15 or any other material that is provided by a retail establishment to a  
16 customer at the time of checkout.

17 (b) "Single-use checkout bag" does not mean a bag made of paper,  
18 plastic or any other material that is provided by a retail establishment  
19 to a customer at a time other than the time of checkout.

20 **SECTION 2.** (1) Except as provided in subsection (2) of this section,

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.  
New sections are in boldfaced type.

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1 a retail establishment may not provide single-use checkout bags to  
2 customers.

3 (2) A retail establishment may:

4 (a) Make reusable checkout bags available for sale to customers.

5 (b) Provide reusable checkout bags at no cost to customers.

6 (c) Provide recycled paper checkout bags at no cost to customers  
7 who present a voucher issued under the Women, Infants and Children  
8 Program established in the Oregon Health Authority under ORS  
9 409.600.

10 (d) Provide recycled paper checkout bags to customers if the retail  
11 establishment charges at least five cents for each recycled paper  
12 checkout bag.

13 (3) The Environmental Quality Commission may adopt rules neces-  
14 sary to implement sections 1 to 4 of this 2011 Act.

15 SECTION 3. (1) The Department of Environmental Quality may  
16 impose a civil penalty on a person for a violation of section 2 of this  
17 2011 Act.

18 (2) A civil penalty imposed under this section may not exceed  
19 \$\_\_\_\_\_.

20 (3) Civil penalties described in this section shall be imposed in the  
21 manner provided in ORS 183.745.

22 (4) All penalties recovered under this section shall be paid into the  
23 State Treasury and credited to the General Fund and are available for  
24 general governmental expenses.

25 SECTION 4. A local government, as that term is defined in ORS  
26 174.116, may not impose any tax, fee, assessment, surcharge or other  
27 charge on:

28 (1) Recycled paper checkout bags;

29 (2) Reusable checkout bags;

30 (3) Single-use checkout bags; or

31 (4) Bags made of paper, plastic or any other material that are pro-

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1 vided by a retail establishment to a customer at a time other than the  
2 time of checkout.

3 SECTION 5. ORS 459A.695 is repealed.

4 SECTION 6. ORS 459.235 is amended to read:

5 459.235. (1) Applications for permits shall be on forms prescribed by the  
6 Department of Environmental Quality. An application shall contain a de-  
7 scription of the existing and proposed operation and the existing and pro-  
8 posed facilities at the site, with detailed plans and specifications for any  
9 facilities to be constructed. The application shall include a recommendation  
10 by each local government unit having jurisdiction and such other informa-  
11 tion the department deems necessary in order to determine whether the site  
12 and solid waste disposal facilities located thereon and the operation will  
13 comply with applicable requirements.

14 (2) The Environmental Quality Commission shall establish a schedule of  
15 fees for disposal site permits. The permit fees contained in the schedule shall  
16 be based on the anticipated cost of filing and investigating the application,  
17 of issuing or denying the requested permit and of an inspection program to  
18 determine compliance or noncompliance with the permit.

19 (3) In addition to the fees imposed under subsection (2) of this section, the  
20 commission shall establish a schedule of permit fees for the purpose of im-  
21 plementing this section and ORS 90.318, 182.375, 279A.125, 279A.155, 279B.025,  
22 279B.240, 279B.270, 279B.280, 459.005, 459.015, 459.247, 459.418, 459.995,  
23 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110,  
24 459A.115, 459A.475, 459A.480, 459A.500 to 459A.685[ 459A.695] and 459A.750.  
25 The fees shall be based on the amount of solid waste received at the disposal  
26 site.

27 (4) Notwithstanding any other fee or surcharge imposed under ORS  
28 459.005 to 459.437 or 459A.005 to 459A.120, for the disposal of solid waste, in  
29 order to encourage the use of suitable material other than virgin material  
30 for daily cover at a disposal site, the only fee that may be charged for the  
31 disposal of substitute material that is also used for daily cover is the permit

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1 fee established under this section.

2 **SECTION 7.** ORS 459A.115 is amended to read:

3 459A.115. (1) From January 1, 1992, to December 31, 1993, the schedule of  
4 fees as established by the Environmental Quality Commission under ORS  
5 459A.110 (1) is increased by 35 cents per ton. The portion of the fees attrib-  
6 utable to the 35 cents per ton increase shall be deposited into the General  
7 Fund and credited to an account of the Department of Environmental Qual-  
8 ity. Such moneys are continuously appropriated to the department to imple-  
9 ment the provisions of this section and ORS, 459.005, 459.015, 459.235, 459.247,  
10 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070,  
11 459A.110, 459A.500 to 459A.685[ 459A.695] and 459A.750.

12 (2) Beginning January 1, 1994, the schedule of fees as established by the  
13 commission under ORS 459A.110 is increased by 31 cents per ton and shall  
14 be deposited into the General Fund and credited to an account of the de-  
15 partment. Such moneys are continuously appropriated to the department to  
16 implement the provisions described in subsection (1) of this section, exclud-  
17 ing ORS 459.418.

18 **SECTION 8.** (1) Except as provided in subsection (2) of this section,  
19 sections 1 to 4 of this 2011 Act, the repeal of ORS 459A.695 by section  
20 5 of this 2011 Act and the amendments to ORS 459.235 and 459A.115 by  
21 sections 6 and 7 of this 2011 Act become operative on January 1, 2012.

22 (2) The Environmental Quality Commission may adopt rules before  
23 the operative date specified in subsection (1) of this section, or take  
24 any other action before the operative date specified in subsection (1)  
25 of this section, that is necessary to implement, on or after the opera-  
26 tive date specified in subsection (1) of this section, sections 1 to 4 of  
27 this 2011 Act, the repeal of ORS 459A.695 by section 5 of this 2011 Act  
28 and the amendments to ORS 459.235 and 459A.115 by sections 6 and 7  
29 of this 2011 Act.

30 **SECTION 9.** This 2011 Act being necessary for the immediate pres-  
31 ervation of the public peace, health and safety, an emergency is de-

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1 clared to exist, and this 2011 Act takes effect on its passage.

2

[5]

**EXHIBIT "B"****17.103.010 Definitions.**

Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter 17.103.

- A. **"Compostable plastic bag"** is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard Specifications for Compostable Plastics D6400, as published in September 2004.
- B. **"Recycled paper bag"** means a paper carryout bag provided by a store to a customer that meets all of the following requirements:
  - 1. Contains a minimum of 40 percent postconsumer recycled content
  - 2. Is accepted for recycling in the City of Portland recycled program
- C. **"Reusable bag"** means a bag that with handles that is specifically designed and manufactured for multiple reuse and is made of durable material specifically designed for and provided to consumers with the intention of multiple, long-term use
- D. **"Single-use carryout bag"** means a bag that is provided by a store to a customer and that is not a reusable bag.
  - 1. A single-use carryout bag does not include either of the following:
    - a. A bag provided by a pharmacy to a customer purchasing prescription medication
    - b. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable bag.
- E. **"Store"** means a retail establishment that
  - 1. Is a full-line, self-service retail store with gross annual sales of \$2,000,000 (\$2 million), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items; or
  - 2. Has over 10,000 square feet of retail space that generates sales and has a pharmacy as defined in ORS 689.005 and which is subject to the rules of the State Board of Pharmacy.

**17.103.020 Purpose**

The purpose of this Chapter is to prohibit stores from distributing single-use carryout bags to their customers, to encourage the distribution and use of reusable bags, and to permit stores to sell to consumers recycled or compostable bags for carryout use.

**17.103.030. Carryout Bag Regulation**

- A. On and after October 1, 2011, a store is prohibited from providing a single-use carryout bag to a customer, except as provided in this Section.
- B. A store must make reusable bags, available to customers, either for purchase or at no cost.

- C. A store may make available for sale to a consumer at the point of sale a recycled paper bag at a cost not less than five cents (\$0.05) per bag.
- D. A store may make available for sale to a consumer at the point of sale a compostable plastic bag, at a cost not less than five cents (\$0.05) per bag providing that the City is accepting compostable plastic bags in the citywide curbside composting program.

#### **17.103.040. Bureau Director's Authority**

The Director of the Bureau of Planning and Sustainability is authorized to promulgate administrative rules and regulations to interpret, implement and execute the provisions of this Chapter.

#### **17.103.050. Enforcement and Penalties**

- A. Any store that violates this Ordinance shall be subject to the following civil penalties, but, in no event shall a store be liable for a civil penalty for more than one violation per day:
  - 1. a written warning for the 1<sup>st</sup> violation
  - 2. \$100 for the 2<sup>nd</sup> violation
  - 3. \$200 for the 3<sup>rd</sup> violation; or
  - 4. \$500 for the 4<sup>th</sup> and each subsequent violation in a 365-day period
- B. The Director of the Bureau of Planning and Sustainability, upon determination that a violation of this code or regulations duly adopted pursuant to this code has occurred, will send a written notice of the violation by certified mail to the store which will specify the violation and appropriate penalty.
- C. Any store receiving a notice of violation may appeal that determination to the Code Hearings Officer pursuant to Chapter 22.10. Appeals must be filed within 30 days of the violation notice.
- D. The Director of the Bureau of Planning and Sustainability is hereby authorized to administer and enforce rules of this chapter and can adopt rules, procedure, and forms to implement the provisions of this chapter.

#### **17.103.060. No Conflict with Federal or State Law; Severability**

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. If any provision of this ordinance, or its application to any person or circumstances, is held to be invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

## EXHIBIT "C"



MAYOR SAM ADAMS  
CITY OF PORTLAND

MARK HASS  
STATE SENATOR  
DISTRICT 14

July 22, 2010

We recognize our mutual and collaborative efforts to ban plastic bags and impose a minimum five-cent charge on recycled paper bags as a means of reducing harmful waste and promoting sustainability in Oregon.

Based on our meeting on July 21, 2010, we agree to the following:

- The Mayor will bring a resolution to the Portland City Council to urge the Oregon Legislature to pass a state law in 2011 banning plastic bags and imposing a minimum five-cent charge on recycled paper bags. The resolution will also indicate that should the legislature not be successful by sine die of the 2011 regular legislative session, the Mayor will bring forward an ordinance to implement a ban on plastic bags and a minimum five-cent charge on recycled paper bags in the city of Portland.
- The members of the Oregon Legislature who have signed below will actively support the city of Portland's resolution before City Council as well as the city's ordinance to ban plastic bags should the legislative effort not succeed during the 2011 legislative session.

We are committed to working together to protect Oregon's environment.

Mayor Sam Adams

Senator Mark Hass

Senator Jackie Dingfelder

Senator Diane Rosenbaum

Representative Ben Cannon

Cc: Commissioner Nick Fish  
Commissioner Amanda Fritz  
Commissioner Randy Leonard  
Commissioner Dan Saltzman

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