

**IMPACT STATEMENT**

**Legislation title:** Repeal Code for Single-use Plastic Checkout Bags and Polystyrene Foam Food Containers and replace with Code Prohibitions and Restrictions on Single-use Plastic (Ordinance; replace Code Chapter 17.103; repeal Code Sections 17.102.300-400)

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**Purpose of proposed legislation and background information:**

On June 20<sup>th</sup>, Portland City Council directed the Bureau of Planning and Sustainability to work in collaboration with the Mayor’s Office to develop a comprehensive policy strategy to address the issue of single-use plastic waste in the City of Portland. Over the summer and into the fall of 2018, City staff led and coordinated an in-depth policy development and stakeholder process to meet this Council direction.

The proposed ordinance will amend City Code 17.103 to include a chapter authorizing the City of Portland to implement rules intended to reduce single-use plastic serveware.

**Financial and budgetary impacts:**

There would be no direct financial and budgetary impact on the City from the adoption of this code itself. Subsequent outreach and enforcement components will rely on existing resources within the Bureau of Planning and Sustainability’s budget. If additional resources are needed, BPS will seek to identify funds during the Spring 2019 BuMP budget process.

**Community impacts and community involvement:**

Adoption of the proposed legislation would impact Portland’s business community. The City has developed a notification and outreach strategy that will be implemented by the Bureau of Planning and Sustainability. This outreach will focus on consumer and business actions for compliance with the proposed legislation. Notification and outreach will begin in January of 2019 and run until after the ordinance takes effect on July 1, 2019.

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES:** Please complete the information below.
- NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

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## Exhibit A

### Chapter 17.103 Prohibitions and Restrictions on Single-use Plastic

#### 17.103.100 Definitions for Prohibition on Polystyrene Foam Food Containers (PSF)

As used in Sections 17.103.100 through 17.103.120, the following terms have the following meanings:

- A. "Food vendor" means any restaurant or retail food vendor.
- B. "Food packager" means any person, located within the City of Portland, who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- C. "Nonprofit food provider" means a recognized tax-exempt organization which provides food as a part of its services.
- D. "Prepared food" means food or beverages which are served on the vendor's premises without preparation, or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared food does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off the premises.
- E. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- F. "PSF" means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.
- G. "Restaurant" means any establishment, located within the City of Portland, selling prepared food to be eaten by customers. Restaurant includes a sidewalk food vendor.
- H. "Retail Food Vendor" or "Vendor" means any store, shop, sales outlet or other establishment, including a grocery store or a delicatessen, located within the City of Portland, which provides prepared food.

#### 17.103.110 Prohibition on Certain PSF Uses

On and after January 1990, no restaurant or retail food vendor shall serve prepared food in any PSF products.

#### 17.103.120 Exemptions for PSF Use

The City Council, or its appointee, may exempt a food vendor, food packager or nonprofit food provider from the requirements of this Code for a one-year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

A. Situations where there are no acceptable alternatives to PSF packaging for reasons which are unique to the vendor or provider;

B. Situations where compliance with the requirements of this Code would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected right would be denied if compliance were required and such request for exemption is denied, review of the denial shall only be by writ of review as provided for in ORS 34.010 to 34.102 and not otherwise.

### 17.103.200 Purpose for Prohibition on Single-Use Plastic Checkout Bags

The purpose for the prohibition on single-use plastic checkout bags is to regulate the distribution of plastic bags at retail and food establishments. The distribution of plastic bags has significant, on-going harmful impacts upon the environment, including;

- A. Plastic bags are a major source of litter.
- B. When littered, the material is detrimental to wildlife that ingests it.
- C. The materials used in plastic bags are persistent in the environment.

### 17.103.210 Definitions for Prohibition on Single-Use Plastic Checkout Bags

As used in Sections 17.103.200 through 17.103.220, the following terms have the following meanings:

- A. "Food provider" means any person in the City that provides prepared food for public consumption on or off its premises and includes, without limitation, any retail establishment, shop, sales outlet, restaurant, grocery store, delicatessen or catering truck or vehicle.
- B. "Grocery store" means any business in the City with gross annual receipts of \$2,000,000 or greater, offering for sale items of food and perishable items as well as other household goods and supplies.
- C. "Recycled paper bag" means a paper checkout bag provided by a retail establishment or food provider to customers, meeting the following requirements:
  1. Contains a minimum of 40 percent recycled content; and
  2. Is accepted for recycling in the City of Portland recycling program regulations under Chapter 17.102 of the City Code.
- D. "Reusable bag" means a bag with handles that is specifically designed and manufactured for long-term multiple reuse and is:
  1. Made of cloth or other machine washable fabric; or
  2. Made of durable plastic that is at least 4.0 mils thick.
- E. "Retail establishment" means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability

partnership or any other form of organization located within the City that sells or offers for sale goods to a customer.

- F. "Single-use plastic checkout bag" means a plastic bag that is provided by a retail establishment or food provider to a customer and is not a reusable bag. A single-use checkout bag does not include the following:
1. A bag provided by a pharmacist to contain prescription medication purchased by customers of the pharmacy;
  2. 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; or,
  3. A plastic cover designed and used for protecting garments on a hanger.

### 17.103.220 Checkout Bag Regulation

A. As of March 1, 2013, the following shall provide only recycled paper bags or reusable bags as checkout bags to customers:

1. Grocery stores; or
2. Retail establishments or food providers with greater than 10,000 square feet in specific store size.

B. As of October 1, 2013, all retail establishments and food providers shall provide only recycled paper bags or reusable bags as checkout bags to customers.

### 17.103.300 Definitions for Restrictions on Single-Use Plastic Serviceware

As used in Sections 17.103.300 through 17.103.320, the following terms have the following meanings:

- A. "Condiment packaging" means plastic packaging used to deliver single-serving condiments to customers. This includes but is not limited to single-serving plastic packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam and soy sauce.
- B. "Customer" means every person who purchases food or beverage that is intended to be consumed using single-use plastics.
- C. "Dine-in" means food and beverage that are intended to be consumed inside the place of business where the food and beverage were purchased, including without limitation cafeterias and food halls.
- D. "Electronic orders" are food purchases conducted by smart phone, email or the website of a retail food and beverage establishment.
- E. "Fast food" is food that can be prepared quickly and easily and is sold in retail and beverage establishments as a quick meal or to be taken out of the retail food and beverage establishment for consumption. Fast food includes take-out and delivery orders and applies to orders transacted in person, by phone or electronically.

- F. ~~D.~~ "Institutional cafeterias" are dine-in areas within government, education and medical institutions. Institutional cafeterias include ones managed by the institution or contracted food services.
- G. ~~E.~~ "Plastic serviceware" means single-use plastic straws, stirrers, utensils and condiment packaging.
- H. ~~F.~~ "Retail food and beverage establishments" means any retail business that provides single-use plastic serviceware as a component of the product delivery. This includes but is not limited to full service and limited service (or fast food) restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels and motels, caterers and food service contractors.
- ~~G.~~ "Take-out and delivery" means food and beverage that are intended to be consumed outside the place of business where the food and beverage were purchased, including without limitation in person, by phone or electronic orders for take-out, delivery and fast food.
- I. "Utensils" are single-use plastic utensils intended for consumption of food which include but are not limited to spoons, forks, knives, sporks and chopsticks.

#### 17.103.310 Restrictions on Single-Use Plastic Serviceware

- A. As of July 1, 2019, all retail food and beverage establishments and institutional cafeterias, where beverages may be consumed at dine-in areas, shall provide plastic serviceware ~~straws and stirrers~~ only after customer request.
- B. As of July 1, 2019, all retail food and beverage establishments and institutional cafeterias, where customers may order fast food, take-out or ~~and~~ delivery, shall provide plastic serviceware ~~utensils and condiment packaging to take-out and delivery to~~ customers only after asking if the customer needs plastic serviceware ~~utensils and condiment packaging~~ and the customer responds affirmatively. ~~This requirement applies to face-to-face, phone and electronic orders.~~

#### 17.103.400 Authority of Director to Adopt Rules

- A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.
1. Any rule adopted pursuant to this Section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, the Director shall conduct additional public review, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed with the City Auditor's Portland Policy Documents repository.
3. An interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within 5 business days of the adoption of an interim rule, the Director shall send notice of the rule to all of the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments:
  - a. Neighborhood Associations recognized by the City Office of Community & Civic Life;
  - b. District Coalitions recognized by the City Office of Community & Civic Life;
  - c. Business District Associations identified by the City Office of Community & Civic Life; and
  - d. Persons on the Bureau of Planning and Sustainability list of parties interested in administrative rules.

### 17.103.410 Enforcement and Penalties

#### A. Violations of Chapter 17.103 shall be subject to:

1. Upon the first violation, the Director shall issue a written warning notice to the violator that a violation has occurred.
2. Upon subsequent violations, the following penalties shall apply:
  - a. \$100 for the first violation after the written warning in a calendar year;
  - b. \$200 for the second violation in the same calendar year; and
  - c. \$500 for any subsequent violation within the same calendar year.
3. No more than one penalty shall be imposed upon any single location within a 7-day period.

B. Upon making a determination that a violation of this code or regulations duly adopted pursuant to this Chapter 17.103 has occurred, the Director will send a written notice of the violation by mail to the violator specifying the violation and the applicable penalty as set forth in Subsection A.

C. Any violator receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Section 22.10.030.

#### 17.103.420 Severability

If any Section, Subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this Chapter, and each Section, Subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more Sections, Subsections, sentences, clauses or phrases may be declared invalid or unconstitutional and, if for any reason this Chapter should be declared invalid or unconstitutional, then the remaining Section, Subsection, sentence, clause or phrases shall be in full force and effect.