

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

Purpose:

By City Council adoption on March 1, 2012, Chapter 15-6 (*Solid Waste Services*) of the City Code was amended to renumber Article 7 (*Enforcement and Penalties*) as Article 8 and add a new Article 7 (*Carryout Bags*). The purpose of the following Rules are to establish the framework for implementation, administration, and enforcement of the City Council resolution and ordinance to “phase in regulation of carryout bags within the City limits.”

Administrative Rules

10.0 SINGLE-USE CARRYOUT BAGS RULES

- 10.1 BACKGROUND AND SCOPE OF RULES
- 10.2 APPLICABILITY
- 10.3 GENERAL REQUIREMENTS
- 10.4 DEFINITIONS
- 10.5 REUSABLE CARRYOUT BAG STANDARDS
- 10.6 SIGNAGE AND EDUCATION STANDARDS
- 10.7 EXEMPTIONS
- 10.8 ALTERNATIVE COMPLIANCE
- 10.9 ALTERNATIVE COMPLIANCE PROPOSALS AND CRITERIA
- 10.10 HARDSHIP VARIANCE
- 10.11 PROCESS TO REQUEST VARIANCE
- 10.12 DIRECTOR VARIANCE RULING
- 10.13 ORDINANCE ENFORCEMENT
- 10.14 REGULATION ADOPTION AND EFFECTIVE DATE

**Adoption of proposed rules contingent upon City Council approval
in accordance with City Code Section 15-6-3(B).**

DRAFT 2 RULES

Please submit public comments by 5pm on September 24, 2012
Comments can be submitted via e-mail to ARRpubliccomment@austintexas.gov

PUBLIC DISCUSSION

Draft 3 Rules will be published by October 5th.
A public discussion regarding Draft 3 of these administrative rules will be held at the
Zero Waste Advisory Commission on October 10th at
6:30 pm at City Hall, 301 W. 2nd Street.

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

10.0 SINGLE-USE CARRYOUT BAG RULES

10.1 BACKGROUND AND SCOPE OF RULES

10.1.1 On March 1, 2012, the Austin City Council unanimously approved amending Chapter 15-6 of the City Code to include Article 7 (*Carryout Bags*) which regulates the types of bags business establishments may provide to their customers effective March 1, 2013.

10.2 APPLICABILITY

10.2.1 These rules specifically apply to business establishments (see definition in 10.4.1) located within the city limits of Austin, Texas.

10.2.2 The rules contained within this document are intended to specify the standards and expectations of business establishments that provide carryout bags to their customers.

10.3 GENERAL REQUIREMENTS. Effective March 1, 2013:

10.3.1 Affected business establishments may not provide single-use carryout bags to any person or entity and shall display signage to educate their customers about their bag options.

10.3.2 Affected business establishments shall cease distribution of single-use carryout bags on or before March 1, 2013.

10.3.3 No person may provide single-use carryout bags at any City facility, City-sponsored event, or any event held on City property.

10.3.4 Affected business establishments may provide or sell reusable carryout bags to its customers or any person.

10.3.5 The City of Austin shall not regulate the price of reusable carryout bags.

10.3.6 A person may provide or sell reusable carryout bags at a City facility, City-sponsored event, or an event held on City property.

10.4 DEFINITIONS. For the purpose of the Single-Use Carryout Bag Rules, the following definitions shall apply:

10.4.1 **BUSINESS ESTABLISHMENT** means any commercial enterprise that provides carryout bags to its customers, including sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.

10.4.2 **CARRYOUT BAG** means a bag provided by a business establishment to a customer typically at the point of sale for the purpose of transporting purchases.

10.4.3 **REUSABLE CARRYOUT BAG** means a carryout bag that is specifically designed and manufactured for multiple reuse, and meets the following criteria:

10.4.3.1 Displays in a highly visible manner on the bag exterior, language describing the bag's ability to be reused and recycled, as prescribed in section 10.5 (*Reusable Carryout Bag Standards*.)

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

- 10.4.3.2 Has handles as prescribed in section 10.5 (*Reusable Carryout Bag Standards*); and
- 10.4.3.3 Is constructed of either:
 - 10.4.3.3.1 Cloth, other washable fabric or other durable materials whether woven or non-woven; or
 - 10.4.3.3.2 Plastic with a minimum thickness of 4.0mm and containing only the types of plastic resin as prescribed in section 10.5 (*Reusable Carryout Bag Standards*); or
 - 10.4.3.3.3 Paper as prescribed in section 10.5 (*Reusable Carryout Bag Standards*.)

10.4.4 **SINGLE-USE CARRYOUT BAG** means a carryout bag that is not a reusable carryout bag.

10.5 REUSABLE CARRYOUT BAG STANDARDS.

- 10.5.1 Reusable carryout bags must meet the following criteria:
 - 10.5.1.1 If made of plastic, be made of a minimum thickness of 4.0 mil;
 - 10.5.1.2 If made of paper, must contain a minimum of 30% recycled content beginning March 1, 2013, and contain a minimum 100% recycled content by March 1, 2015, and display “REUSABLE and RECYCLABLE”, or equivalent message on the bag exterior;
 - 10.5.1.3 All reusable carryout bags, whether plastic, paper, cloth or other fabric, must have consumer carrying handles.
 - 10.5.1.4 Handles are not required for carryout bags constructed out of recyclable paper with a height of less than 14 inches and width of less than 8 inches.

10.6 SIGNAGE AND EDUCATION REQUIREMENTS. Affected business establishments shall prominently display signs and educate customers regarding the ordinance and available reusable bag options offered.

- 10.6.1 Affected business establishments shall provide consumer education from March 1, 2013 through December 31, 2013 that informs customers that include language explaining that:
 - 10.6.1.1 By City ordinance, the business establishment no longer offers single-use carryout bags, but that more durable reusable bags are available; and
 - 10.6.1.2 The business establishment will bag any items or products purchased in reusable bags provided by the customer, issued by the business establishment, or purchased at the business establishment.
- 10.6.2 Affected business establishments shall post interior signs from March 1, 2013 through December 31, 2015 that are:
 - 10.6.2.1 Placed within at least six (6) feet from the point of sale.
 - 10.6.2.2 Include language explaining that:
 - 10.6.2.2.1 By City ordinance, the business establishment no longer offers single-use carryout bags, but that more durable reusable bags are available; and

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

- 10.6.2.2.2 The business establishment will bag any items or products purchased in reusable bags provided by the customer, issued by the business establishment, or purchased at the business establishment.
 - 10.6.3 Affected business establishments that own, lease, or control their customer parking areas shall post permanent exterior signs with the following requirements:
 - 10.6.3.1 Include language that reminds customers to bring their reusable bags; and
 - 10.6.3.2 Be located and visible in the customer parking area at a minimum of one sign for every fifty (50) parking spaces.
- 10.7 EXEMPTIONS.** The following bags are exempt from the single-use carryout bag regulations:
 - 10.7.1 **LAUNDRY, NEWSPAPER, AND WASTE BAGS** such as laundry dry cleaning bags, door-hangar bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;
 - 10.7.2 **PHARMACEUTICAL AND VETERINARIAN BAGS** such as paper and plastic bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities;
 - 10.7.3 **RESTAURANT BAGS** used by restaurants to take away prepared food, provided they are recyclable in the City of Austin residential recycling program. Only paper bags are currently recyclable in the residential recycling program. Restaurants may petition for the continued use of plastic bags through the hardship exemption provided that documentation is provided that a paper bag substitute will not properly contain the prepared take away food due to health regulations.
 - 10.7.4 **NON-CHECKOUT BAGS** such as bags used by a customer inside a business establishment to:
 - 10.7.4.1 Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
 - 10.7.4.2 Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
 - 10.7.4.3 Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases; or
 - 10.7.4.4 Contain unwrapped prepared foods or bakery goods.
 - 10.7.5 **CHARITY NON-PROFITS** such as bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.
- 10.8 ALTERNATIVE COMPLIANCE**
 - 10.8.1 **ALTERNATIVE COMPLIANCE BAGS.** The Director may approve a substitute carryout bag if the Director finds:
 - 10.8.1.1 Due to unique circumstances, the applicant has a need for a substitute bag; and

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

10.8.1.2 The substitute bag meets the intent of the ordinance to promote reuse.

10.8.2 **PLASTIC CARRYOUT BAGS.** The Director may approve an alternative to the required 4.0 mil thickness for plastic reusable carryout bags if the Director finds:

10.8.2.1 Due to unique circumstances, the applicant has a need for alternative bags; and

10.8.2.2 The proposed alternative bag meets minimum reuse testing standard of 100 reuses carrying 16 pounds; and

10.8.2.3 Manufacturer or distributor documentation of the minimum reuse testing standards provided by the applicant is found sufficient by the Director to support use of the alternative bags.

10.9 ALTERNATIVE COMPLIANCE PROPOSALS/CRITERIA

10.9.1 **PROPOSALS.** The Director may approve a method of alternative compliance proposed by the applicant if the Director finds:

10.9.1.1 The applicant has demonstrated a need for an alternative method of compliance within the first year of implementation;

10.9.1.2 The proposed alternative method meets the intent of City Council in adopting City Code Chapter 15-6, Article 7, including the elimination of single-use carryout bags;

10.9.1.3 Documentation of the findings provided by the applicant is found sufficient by the Director to support the alternative compliance method.

10.9.2 **CRITERIA.** Alternative compliance methods must:

10.9.2.1 Be restricted to a time period not to exceed one (1) year;

10.9.2.2 The proposed temporary alternative compliance bag meets minimum reuse testing standard of 10 reuses carrying 16 pounds;

10.9.2.3 Provide control measures to prevent continued consumer reliance on the alternative compliance;

10.9.2.4 Provide a smooth transition to full code compliance by the end of the alternative compliance time period;

10.9.2.5 Provide signage to clarify consumer options; and

10.9.2.6 Include monthly reporting to the City regarding the effectiveness of the alternative method, including total alternative bags distributed.

10.10 HARDSHIP VARIANCE.

10.10.1 The Director may grant a variance from a requirement of Chapter 15-6 Article 7 (*Carryout Bags*) only after determining that application of the regulations would:

10.10.1.1 Cause undue hardship as demonstrated by the applicant; or

10.10.1.2 Deprive a person or business enterprise of a legally protected right; and

10.10.1.3 The applicant provides documentation found sufficient by the Director to support the hardship variance.

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

10.10.2 The Director may grant additional time within which to fully comply with Chapter 15-6 Article 7 and these rules if the Director finds:

10.10.2.1 That compliance within the timeline established in City Code would cause undue hardship; and

10.10.2.2 The applicant provides documentation found sufficient by the Director to support granting additional time to comply.

10.11. PROCESS TO REQUEST VARIANCE.

10.11.1 A request for variance or alternative compliance shall contain at a minimum the following information:

A. The name and locations of the affected business establishments

B. Business contact information

C. The type of the variance request (Alternative Compliance or Hardship Exemption)

D. The nature of the variance requested, including education, bag and/or distribution variances

E. Proposed alternative compliance method, and timeline requested

F. Description of hardship requiring such request, and

G. Demonstration that hardship is above and beyond general transition and conversion issues encountered by other business establishments to honor the requirements of this ordinance.

10.11.2 A request for variance/alternative compliance must be presented to the Director no later than December 31, 2012 for existing business establishments, for an effective date of March 1, 2013 if approved.

10.11.3 Variance requests on or after January 1, 2013 will be reviewed on a case-by-case basis.

10.11.4 A variance granted by the Director must be the minimum departure necessary to address the hardship or unique circumstances.

10.12 DIRECTOR VARIANCE RULING.

10.12.1 The Director shall evaluate all hardship variance requests on a case-by-case basis.

10.12.2 The Director shall render a decision on hardship variances and alternative compliance requests within 60 days of a submitted request.

10.12.3 The Director shall prepare written findings to support the granting or denial of a variance request under this Section. All such written findings shall be publicly recorded.

10.13 ORDINANCE ENFORCEMENT. The City will ensure compliance with the prohibition of distribution by business establishments of single-use carryout bags through citizen complaints, onsite observations, and enforcement by City staff

10.14 REGULATION ADOPTION and EFFECTIVE DATE: The Austin City Council approved and adopted Ordinance 20120301-078, adding to City Code chapter 15-6 a new Article 7 entitled Carryout Bags on March 1, 2012. Ordinance 20120301-078 took effect on

Austin Resource Recovery
Draft 2: Administrative Rules Implementing Chapter 15-6 – Article 7
Single-Use Carryout Bags Regulations

March 12, 2012, with full implementation of all requirements of this ordinance effective March 1, 2013.

DRAFT 2