

Plastic Bag Fee

Ordinance establishes Chapter 22, Code of Ordinances, regarding litter; providing for repeal of conflicting ordinances; providing for severance; and providing for publication.

WHEREAS, the City Council has determined that this amendment would best serve the public health, necessity, convenience, and general welfare of the City of Corpus Christi and its citizens.

Now, be it ordained by the City Council of the City of Corpus Christi, Texas:

Section 1. That Chapter 22, Code of Ordinances, shall read as follows:

Sec. 22-1. Definitions.

As used in this chapter, the following terms shall mean:

Business means any commercial enterprise or establishment, 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.

Construction site owner means the person who owns or leases the premises on which a construction activity that is regulated by this chapter is being conducted.

Contractor means the person has obtained a permit required by this chapter, and includes a builder, electrician, mechanical contractor, plumber, roofer, or other member of a construction trade. This definition includes subcontractors of the contractor and the employees of the contractor and subcontractors.

Department means The Solid Waste Operations Department of the city.

Director means The Director of Solid Waste Operations of the City of Corpus Christi, or a designated representative of the director.

Dumpster means a container, which holds more than one (1) cubic yard, used to store solid waste until it is collected for disposal. The term also includes roll-on/roll-off containers that are used to transport solid waste on vehicle chassis.

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Food establishment means any place where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether consumption is on or off the premise and whether there is a charge for the food. The term does not include private homes where food is prepared or served for individual family consumption; a private group preparing and serving food for its own consumption; food vending machines; and supply vehicles.

Litter means:

- (a) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or
- (b) nondecayable solid waste, except ashes, that consists of:
 - (i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;
 - (ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
 - (iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

Person means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States government, a state, a municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

Places of public accommodation means any physical structure and the entire premises, lot, or parcel of land on which the structure is situated, including the outside seating areas, parking areas, driveways, and vehicle entrances and exits.

Plastic checkout bag means a checkout bag that is made of plastic which is provided by a business to a customer typically at the point of sale for the purpose of transporting goods after shopping and is less than four (4) mils in thickness.

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Reusable bag means a bag that is specifically designed and manufactured for multiple reuse and is:

- (1) made of cloth or other washable fabric,
- (2) made of other durable material suitable for reuse,
- (3) is made of durable plastic which is four (4) mils or greater in thickness.

Sec. 22-2 Littering prohibited in public places.

- (a) No person may deposit or permit to be deposited any excrement, offal, urine, litter, or other kind of solid waste in any public place in the city, unless properly placed in a conventional refuse receptacle or for collection by solid waste services or a private solid waste collection service at a location designated by the director of solid waste services.
- (b) For the purposes of this section, the following are declared to be public places:
 - (1) All rights-of-way, including street and drainage right-of-ways.
 - (2) Sidewalks, trails, paths, passageways, and walkways generally used by pedestrians.
 - (3) Parks.
 - (4) Municipal piers and boat ramps.
 - (5) Places of public accommodation situated within the corporate limits of the city, such as those utilized for religious worship, educational purposes, or where people congregate or assemble for business, pleasure, or amusement purposes.
- (c) "Conventional refuse receptacle" and "solid waste" within this section have the meanings defined in Section 21-1 of this Code.
- (d) "Deposit" within this section means to drop, cast, throw, place, release, blow, spill, or dump.
- (e) "Properly placed" within this section means the discarding of litter or other solid waste so that the litter or solid waste does not protrude above the top of the conventional refuse receptacle.
- (f) Violations of this section are treated as strict liability offenses. There is no need to prove that the person had any intent to violate the section.

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Sec. 22-3. Littering, public beaches.

No person shall litter any public beach.

Sec. 22-4. Littering, construction sites.

- (a) A contractor or construction site owner may not allow any litter to accumulate on the construction site except in a refuse receptacle.
- (b) A contractor or construction site owner may not throw or allow any litter to blow upon or be washed into the streets, drainage ditches, or storm water sewers of the city; onto any adjacent property; or into any body of water within the city.
- (c) It is a defense to prosecution that the contractor or construction site owner picked up any litter that accidentally blew or was washed into the street, a drainage ditch, storm water sewer, onto another's property, or a body of water and properly placed the litter into a receptacle.

Sec. 22-5. Littering, food establishments.

- (a) For the purpose of the public peace, health, safety, morals and general welfare, the entire premises occupied by a business or commercial establishment, including the outside seating areas, parking area, driveway, and vehicle entrances and exits, is declared to be a public place, and that it is contrary to the public peace, safety, morals, health and general welfare of the community to permit litter on such public place.
- (b) The owner or manager of every food establishment shall keep the streets and premises adjacent to the food establishment free from all scraps and litter accumulating on account of the business conducted at the food establishment or dropped or left by customers of the establishment.
- (c) For the purpose of the public peace, health, safety, morals and general welfare, the entire premises occupied by a business or commercial establishment, including the outside seating areas, parking area, driveway, and vehicle entrances and exits, is declared to be a public place, and that it is contrary to the public peace, safety, morals, health and general welfare of the community to permit litter on such public place.
- (d) The owner or operator of a business or commercial establishment shall provide on the premises sufficient refuse receptacles to keep the premises clean, but not less than two

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- (2) receptacles for the receipt of litter available to its patrons or customers. If more than two (2) receptacles are required to hold all of the litter from the premises, the owner or operator shall furnish such additional number of receptacles as is necessary to contain the litter.
- (e) It shall be unlawful for any patron or customer of a business or commercial establishment to throw or deposit any litter on the premises of the business or commercial establishment except in the receptacles provided.
- (f) It is unlawful for any customer or patron of a business or commercial establishment to throw or allow any litter to blow upon the streets of the city or upon private property in the city.
- (g) It is a defense to prosecution that the patron or customer picked up any litter, which accidentally blew into the street or on to another property, and properly placed it into a receptacle.
- (h) The owner or the operator of the business or commercial establishment shall clean the premises and remove all litter therefrom and from any street or other premises to which said litter has traveled, and place same in receptacles within thirty (30) minutes after daily closing time of such business or commercial establishment.
- (i) If the business or commercial establishment operates continuously without closing, then the owner or operator shall clean the premises and remove all litter therefrom and from any street or other premises to which said litter has traveled, and place it in receptacles at 11:00 a.m. and 11:00 p.m. of each day.
- (j) It shall further be the duty of said owner or operator to prevent any litter on the premises from being blown upon or being permitted to come to rest upon the streets of the city or upon any private property in the city.

Sec. 22-6. Litter and solid waste prohibited on lots.

No person who owns or occupies any lot or parcel of land in the city may permit or allow litter, solid waste, inoperative or abandoned household appliances, furniture, or any other unsightly, objectionable, or unsanitary matter to accumulate on the lot or parcel of land, unless placed for collection by solid waste services or a private solid

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waste collection service at a location designated by the director of solid waste services and in accordance with Chapter 21 of this Code.

Sec. 22-7. Work or Improvements by Municipality.

- (a) If the owner of property in the municipality does not comply with a municipal ordinance or requirement relating to stagnant water, filth, carrion, weeds, rubbish, brush, diseased trees, and other objectionable, unsightly, unwholesome, or unsanitary matter, or conditions under this chapter within seven (7) days of notice of a violation, any authorize city official with code enforcement or law enforcement authority, or their designee, may:
- (1) Do the work or make the improvements required; and
 - (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.
- (b) The notice must be given:
- (1) Personally to the owner in writing;
 - (2) By letter addressed to the owner at the owner's address as recorded in the records of the appraisal district in which the property is located; or
 - (3) If personal service cannot be obtained, notice to the property owner must be:
 - i. By publication at least once;
 - ii. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - iii. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (c) If the city official with code enforcement or law enforcement authority, or their designee, mails a notice to a property owner in accordance with subsection (b)(2) of this section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected and the notice is considered delivered.
- (d) In a notice provided under this section, the city official with code enforcement or law enforcement authority, or their designee, may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the director of public health, the director of housing and community development, or the director of solid waste services, or their designees, may correct the violation,

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without further notice, at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the city official with code enforcement or law enforcement authority, or their designee, has not been informed in writing by the owner of an ownership change, then the municipality without notice may take any action permitted by subsections (a)(1) and (2) and assess its expenses as provided by Section 22-8.

Sec. 22-8. Assessment of expenses; lien.

- (a) The city may assess expenses incurred under section 22-7 against the real estate on which the work is done or improvements made.
- (b) To obtain a lien against the property, the city official with code enforcement or law enforcement authority, or their designee, must file a statement of expenses incurred by the city with the County Clerk of Nueces County. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.
- (c) The lien obtained by the city is security for the expenditures made and interest accruing at the rate of ten (10) per cent on the amount due from the date of payment by the city.
- (d) The lien is inferior only to:
 - (1) Tax liens; and
 - (2) Liens for street improvements.
- (e) The city attorney may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.
- (f) The city attorney may foreclose a lien on property under this section in a proceeding relating to the property brought under subchapter E, chapter 33, of the Tax Code, as it may be amended.
- (g) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.
- (h) The remedy provided by this section is in addition to any fines or civil penalties that may be assessed.

Sec. 22-9. Litter and solid waste prohibited on lots.

Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor. In case the owner or occupant of any lot or premises under the provisions of this article shall be a corporation, and shall violate any provision of this

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article, the president, vice-president, secretary or treasurer of such corporation, or any manager, agent or employee of such corporation shall be also severally liable for any penalty.

Sec. 22-10. Establishment and Remittance of Environmental Recovery Fee

- (a) A fee is hereby established for customers making purchases from businesses utilizing plastic checkout bags to offset the cost to the City Environmental Recovery Program.
- (b) The fee shall be either :
 - i. \$0.10 per plastic checkout bag ("per bag"), OR
 - ii. \$1.00 per transaction involving plastic checkout bags ("transaction")
- (c) Each business shall make an election of either the per bag or transaction fee at the time the business submits a Plastic Bag Reduction Program to City of Corpus Christi Solid Waste Department. If no election is made by the business, the per bag fee shall apply.
- (d) If a business wishes to change from the per bag fee to the transaction fee or vice versa, the request must be:
 - i. Within the first 6 months of the first election. If the second election is not made within six months of the first election, the business must wait until the one year anniversary of the first election,
 - ii. In writing, sent certified mail, return receipt requested to the Director of the City of Corpus Christi Solid Waste Department, and
 - iii. May only be changed once every 365 days, starting from the effective date of this ordinance.
- (e) Fees must be paid by the customer at the time of purchase.
- (f) All businesses which choose the per plastic check out bag fee shall indicate on the consumer transaction receipt if the customer used plastic bags and the total amount of fee charged.
- (g) Fees shall be collected by the business on a calendar month basis and remitted to the City of Corpus Christi Solid Waste Department by the 10th of the following calendar month, less a reasonable administrative fee or no more than 5% to remain with the business to offset the

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costs incurred. Rules for remittance shall be promulgated by the Solid Waste Director with the assistance of other departments as may be required. A late payment fee shall be assessed of one hundred (100) dollars for each month the fees are unremitted to the City.

- (h) Fees collected under this ordinance shall be used for, including but not limited to:
- i. The cost of administration of the program;
 - ii. Giveaways of free reusable bags;
 - iii. Public education on reducing litter;
 - iv. Hiring of more code enforcement officers and other City employees to improve litter enforcement;
 - v. Cleanups of shorelines, storm drains, streets, parks and dumping areas;
 - vi. Reduction of the residential solid waste/garbage pickup charges; and
 - vii. Payment of the administrative fee to participating retailers.
- (i) The following items are exempted from the Environmental Recovery Fee
- i. Waste bags, including packages of multiple bags intended for use as garbage bags, pet waste bags, or yard waste bags;
 - ii. Bags used inside a Business to contain bulk items, such as produce, nuts, grains, or candy;
 - iii. Bags used inside a Business to wrap meat, fish, or poultry; and
 - iv. Original manufacturer packaging.

Sec. 22-11. Establishment and Remittance of Environmental Recovery Fee

- (a) Businesses that utilize plastic checkout bags shall register a Plastic Bag Reduction Program with the City of Corpus Christi Solid Waste Department annually. Businesses who utilize plastic checkout bags that fail to register a Plastic Bag Reduction Program with the City of Corpus Christi Solid Waste Department will be subject to penalties as set forth in Section 21-66.
- (b) Businesses utilizing plastic checkout bags shall register an agent or member of management who is personally responsible for Plastic Bag Reduction Program and can be contacted in the event of a violation.
- (c) Registration of Plastic Bag Reduction Programs will begin _____, 2014 in anticipation of the Ordinance effective date of _____, 2014.

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- (d) A business which currently pays the environmental recovery fee can enter the Green Star Program as a way to avoid the environmental recovery fee:
- i. The business must contact the City of Corpus Christi Solid Waste Operations department to request a status change on their business.
 - ii. Over a three month period the business must successfully demonstrate the a sixty (60) percent reduction in plastic checkout bag usage by allowing City of Corpus Christi staff access for spot inspections. (The City will also monitor the Environmental Recovery Fee to determine if the retailer is compliant over the three month period.)
 - iii. After the three month period, the business must submit an application with the City of Corpus Christi requesting formal approval. If approved, the retailer must continue abiding to the Green Star Program and periodic inspections.
 - iv. To maintain eligibility in the Green Star Program, the business must maintain the following reductions against the numbers submitted in their application
 - A. From the effective date of this ordinance until the one year anniversary of that effective date, the business must demonstrate a reduction of the number of plastic checkout bags given to customers of sixty (60%) percent.
 - B. From the day after the one year anniversary of the effective date of this ordinance until the two year anniversary of the effective date of this ordinance, the business must demonstrate a reduction of the number of plastic checkout bags given to customers of eighty (80%) percent.
 - C. From the day after the two year anniversary of the effective date of this ordinance, the business must demonstrate a reduction of the number of plastic checkout bags given to customers of one hundred (100%) percent.

Sec. 22-12. No Plastic Checkout Bags on City Property

Beginning _____, 2014, no person may provide plastic checkout bags at any City facility, City-sponsored event, or any event held on City property.

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Sec. 22-13. Signage Requirement.

- (a) All businesses shall maintain signs, in both English and Spanish, at a point of entry to the business reminding customers:
- i. To bring reusable bags into the business;
 - ii. That plastic checkout bags are only given at customer request at checkout for a fee;
 - iii. If the business has reusable bags for sale, that reusable bags are available for purchase by the consumer; and
 - iv. All signs required by this statute must comply with current city ordinances.
- (b) Businesses not utilizing plastic checkout bags are exempt from this provision.

Sec. 22-14. Rules. The Director of the City of Corpus Christi Solid Waste Department shall adopt rules necessary for the administration of this article and the Environmental Recovery Fee. The Director of the City of Corpus Christi Solid Waste Department shall be responsible for administration of this article; developing all rules and procedures necessary to administer all provisions of this article; developing maintenances programs; and establishing Environmental Recovery Fee criteria and standards.

Section 22-15. Quarterly Reporting.

- (a) All businesses shall maintain records of and submit to the City of Corpus Christi Solid Waste Department a quarterly report that specifies:
- i. The number of plastic bags purchased by the retailer during the reporting period; and
 - ii. The number of reusable bags sold to consumers during the reporting period.
- (b) The business must maintain these records for a period of no less than two years.

Sec. 22-15. Penalties for violation of this chapter.

- (a) Any person who violates any part of Section 22-2 through 22-9 of this chapter shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000.00) per violation per day.
- (b) In the event of a second conviction for a violation of any part of Section 22-2 through 22-9 of this chapter, a person shall be punished by a fine of not less than two thousand dollars (\$2,000.00) per violation per day.

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- (c) Any violation of Section 22-10, 22-11, 22-12, 22-13 or 22-4 shall be subject to punishment as follows:
- First violation. A written warning notice shall be issued to the business that a violation has occurred. No fine shall be issued for the first violation.
- Subsequent violations. The fines shall be as follows:
- (A) \$100 for the first violation in a calendar year;
 - (B) \$200 for the second violation in the same calendar year; or
 - (C) \$500 for each additional violation in the same calendar year.
- (d) No more than one citation shall be issued to a business within a 7-day period.
- (e) A violation under this subsection is a class C misdemeanor.
- (f) The culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and dispensed with and a violation under this subsection is a strict liability offense.
- (g) Any city official with code enforcement authority may issue a citation for any violation of this ordinance.

Section 2. Providing an effective date of _____ 1, 2014.

Section 3. Any ordinance or part of any ordinance in conflict with this ordinance is expressly repealed by this ordinance.

Section 4. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision of this ordinance be given full force and effect for its purpose.

Section 5. Publication shall be made in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

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That the foregoing ordinance was read for the first time and passed to its second reading on this the _____ day of _____, 2014, by the following vote:

| | | | |
|----------------|-------|------------------|-------|
| Nelda Martinez | _____ | Chad Magill | _____ |
| Kelley Allen | _____ | Colleen McIntyre | _____ |
| Rudy Garza | _____ | Lillian Riojas | _____ |
| Priscilla Leal | _____ | Mark Scott | _____ |
| David Loeb | _____ | | |

That the foregoing ordinance was read for the second time and passed finally on this the _____ day of _____, 2014 by the following vote:

| | | | |
|----------------|-------|------------------|-------|
| Nelda Martinez | _____ | Chad Magill | _____ |
| Kelley Allen | _____ | Colleen McIntyre | _____ |
| Rudy Garza | _____ | Lillian Riojas | _____ |
| Priscilla Leal | _____ | Mark Scott | _____ |
| David Loeb | _____ | | |

PASSED AND APPROVED, this the _____th day of _____, 2014.

ATTEST:

Rebecca Huerta
City Secretary

Nelda Martinez
Mayor