

TOWN OF PORTSMOUTH, RI

Ordinance # 2018 –

**AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF PORTSMOUTH**

PART II: GENERAL LEGISLATION

Be it ORDAINED by the Town Council of the Town of Portsmouth:

Section 1. The Town Code, Chapter 326, entitled “Solid Waste” is hereby amended by adding the following new article:

Article VI

PLASTIC BAG REGULATIONS

§ 326-33. Legislative Findings and Intent.

- A. The Town Council has the authority under Article 13 of the Rhode Island Constitution and the Portsmouth Town Charter to regulate issues of solid waste, litter and pollution as a local concern.
- B. The production, use and disposal of plastic checkout bags, which are commonly not recycled, has been shown to have significant detrimental impacts on the environment, including but not limited to contributing to pollution of the terrestrial and coastal environment, clogging storm water drainage systems, and contributing to the injury and death of terrestrial and marine life through ingestion and entanglement.
- C. The manufacture, transport and recycling of plastic checkout bags requires substantial energy consumption and contributes to greenhouse gases.
- D. Plastic checkout bags create a burden to solid waste collection and recycling facilities.
- E. Prohibiting the use of plastic checkout bags is necessary to protect the environment and the public health, safety, and welfare of all residents and visitors.

§ 326-34. Purpose.

The purpose of this chapter is to improve the environment in and around the town and the health, safety, and welfare of its residents by reducing the number of plastic and paper bags being used, encouraging the use and sale of reusable checkout bags and banning the use of plastic bags for retail checkout of goods.

§ 326-35. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUSINESS ESTABLISHMENT – Any commercial enterprise that provides carryout bags to its customers, including sole proprietorships, joint ventures, partnerships, corporations, or any other legal entity and includes all employees of the business and any independent contractors associated with the business. “Business Establishment” does not include sales of goods at yard sales, tag sales, other sales by residents at their homes, and sales by nonprofit organizations.

CARRYOUT BAG – A bag provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases.

DOUBLE-OPENING PLASTIC BAG – Any thin plastic bag with a double opening (top and bottom) to protect clothing or other items for transport.

PLASTIC BARRIER BAG – Any thin plastic bag with a single opening used to:

- (1) Transport fruit, vegetables, nuts, grains, small hardware items, or other items selected by customers at the point of sale;
- (2) Contain or wrap fresh or frozen foods, meat, or fish, whether prepackaged or not;
- (3) Contain or wrap flowers, potted plants, or other items where damage to a good or contamination of other goods placed together in the same bag may be a problem; or
- (4) Contain unwrapped prepared foods or bakery goods.

PLASTIC CARRYOUT BAG – Any plastic carry-out bag that is provided by a business establishment to a customer, typically at the point of sale, for the purpose of transporting purchases. “Plastic Carryout Bag” does not include plastic barrier bags or double-opening plastic bags, as defined herein, or plastic bags measuring larger than 28 inches by 36 inches.

RECYCLABLE PAPER BAG – A paper bag that is fully recyclable overall and contains a minimum of 40% post-consumer recycled content and contains no old growth fiber. The bag should display the words “Reusable” and “Recyclable” or the universal recycling log on the outside of the bag.

REUSABLE BAG – A bag with handles that is specifically designed and manufactured for multiple reuse and is made primarily of cloth or other nonwoven textile or durable plastic with a minimum thickness of four mils. Any straps must be stitched and not heat fused.

§ 326-36. Prohibited Acts.

A. No business establishment shall provide or make available any plastic carryout bag (either complementary or for a fee) for any sales transaction or other use to members of the public, that does not comply with the definition of a Reusable Bag under § 326B-3 of this chapter.

B. All business establishments that provide plastic barrier bags or double-opening bags shall offer a recycling opportunity onsite for the recycling of any plastic bags or clean plastic bag film as defined by the Rhode Island Resource Recovery Corporation RESTORE program.

C. Nothing in this section shall preclude business establishments from making reusable bags or recycling paper bags, as defined under § 326B-3 of this chapter, available to customers, by sale or otherwise.

§ 326-37. Exemptions.

This chapter does not apply to:

A. Laundry dry cleaning bags, door-hanger bags, newspaper bags, or packages of multiple bags intended for use as garbage, pet waste, or yard waste;

B. Bags provided by pharmacists or veterinarians to contain prescription drugs or other medical necessities, provided that the bags are recyclable within the state's recycling program; and

C. Plastic barrier bags, double-opening plastic bags used by a consumer inside a business establishment to:

- (1) Contain bulk items, such as produce, nuts, grains, candy, or small hardware items;
- (2) Contain or wrap frozen foods, meat, or fish, whether or not prepackaged;
- (3) Contain or wrap flowers, potted plants or other items to prevent moisture damage to other purchases;
- (4) Contain unwrapped prepared foods or bakery goods; or
- (5) Bags used by a non-profit corporation or other hunger relief charity to distribute food, grocery products, clothing, or other household items.

§ 326-38. Enforcement; Violations; Penalties.

This chapter shall be enforced by the Police Department, or any other Town Department designated by the Town Administrator. Any person who violates any of the provisions of this chapter shall be subject to the following penalties:

A. For a first offense, the person charged with a violation of this chapter shall be served with a warning letter by delivering it to him or her personally, or by posting a copy upon a conspicuous portion of the retail sales establishment and sending a copy of the same by certified mail to the person to whom the notice is directed. The warning letter shall inform the person charged of the nature of the violation and that it must be corrected within 14 days of the date of the letter, and shall include a copy of this chapter.

B. For a second offense, more than 14 days after service of a warning letter, a fine of \$150 shall be assessed and imposed. The person charged shall be given the opportunity to pay the fine assessed by mail, which shall be indicated on the summons issued by the charging officer.

Should the alleged violator elect not to pay the fine assessed by mail, the violation shall be heard and adjudicated by the Municipal Court.

C. For a third or subsequent offense, a fine of \$300 shall be assessed, and the violation shall be heard and adjudicated by the Municipal Court.

D. Each occurrence of a violation more than 14 days after service of a warning letter, and each day that such violation continues, shall constitute a separate violation and cited as such.

§ 326-39. Hardship Variance.

A. The Town Administrator may grant a variance from the requirements of this chapter only after determining that: (1) application of this chapter would cause undue hardship based upon unique circumstances; or (2) application of this chapter would deprive a person or business of a legally protected right.

B. The requested variance shall be submitted on the town's prescribed forms.

C. Any variance granted under this section must be the minimum variance necessary to address the hardship.

D. The Administrator shall prepare a written report of findings to support the grant or denial of the variance.

§ 326-40. Effective Date. This chapter shall take effect upon passage, provided however, that enforcement shall be stayed until _____.

Section 2. This Ordinance shall take effect upon passage.

**ADOPTED BY TOWN COUNCIL
ACTION ON _____**

Jennifer M. West, Town Clerk