

**2019.29** **IN BOARD OF CITY COUNCIL..APRIL 2, 2019**  
**BE IT ORDAINED**, by the City Council of the City of Biddeford that the Code of Ordinances, **Chapter 58, SOLID WASTE, Article IV, Section 58-106 et al. – Single Use Carry-Out Bags**, is amended by adding to read as follows:

*Note: The entire section is new; however, the underline and ~~strike out~~ text reflects changes based on Policy Committee comments from February 11, 2019.*

**Sec. 58-106 Effective date.**

This article shall become effective (3-months after adoption OR by a date certain to be specified), provided the City gives notice of commencement in the manner required for publication of ordinances.

**Sec. 58-107 Purpose.**

It is in the best interest of the citizens and visitors of Biddeford to protect the environment and natural resources of Maine by prohibiting single-use carry out ~~PLASTIC~~ plastic bags and encouraging the use of reusable shopping bags in Stores, as defined below.

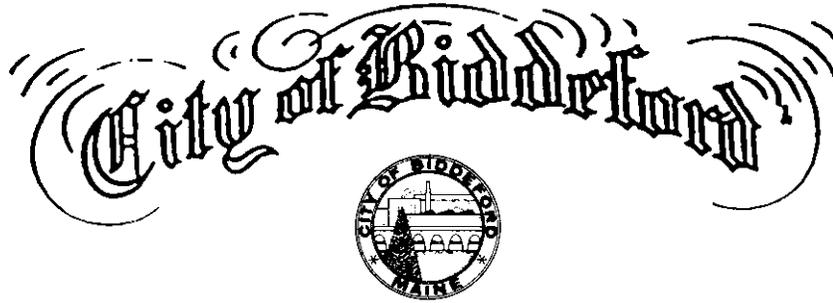
**Sec. 58-108 Findings.**

Single-use carryout bags have a negative impact on the environment and wildlife; and  
Cause significant interference with the efficient processing of single-sort recycling methods; and

A significant amount of plastic bags will still appear in Biddeford's curbside recycling program as contamination despite the fact that Title 38, Chapter 16, §1605, requires all retailers that use plastic bags to bag products at the point of retail sale to locate within 20-feet of the main entrance a receptacle for collecting any used plastic bags; and

It is important to keep the City of Biddeford as litter-free as possible to enhance the quality of life for Biddeford's residents and visitors; and

A substantial portion of Biddeford is adjacent to the Saco River and Biddeford is a coastal community with a vested interest in protecting the ocean environment from plastic debris; and this Ordinance is authorized under the City's home rule authority pursuant to 30-A §3001 et seq.



### **Sec. 58-109 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

#### ***SINGLE-USE CARRYOUT PLASTIC BAG***

A plastic bag other than a Reusable Bag, as defined below, provided at the checkout stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the ~~establishment~~ store. The term Single-Use Carryout Bag includes compostable and biodegradable bags, but does not include ~~reusable bags, produce bags, product bags~~ required for special handling, single-use paper bags, or paper bags provided by pharmacists to contain prescription drugs.

#### ***PRODUCE BAG or PRODUCT BAG***

Any bag ~~without handles~~ used exclusively to carry produce, meats, seafood, other food items or ~~merchandise~~ bulk items within the store to the point of sale inside such store or to prevent such items from coming into direct contact with other purchased items.

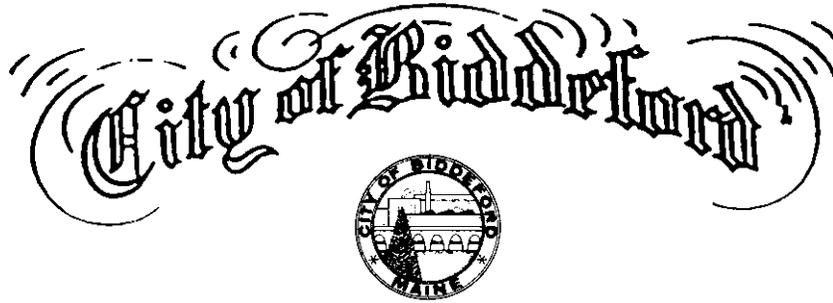
#### ***REUSABLE BAG***

A bag that meets all of the following criteria:

- (a) Designed and manufactured to withstand repeated uses over a period of time;
- (b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;
- (c) Has a minimum rated lifetime of 75 uses; ~~and~~
- (d) Has the capability of carrying a minimum of 18 pounds; and
- (e) If plastic, is at least 4.0 mil thick.

#### ***STORE***

Any commercial enterprise engaged in the sale of food and or merchandise, including, but not limited to, grocery and convenience stores, markets, pharmacies, restaurants, take-out food, temporary and seasonal businesses, and other merchant retailers. ~~of the following retail establishments located within the City of Biddeford engaged in the sale~~



of perishable or non-perishable goods to the ultimate consumer for direct use or consumption and not for resale:

- (a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.
- (b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

"Store" does not mean:

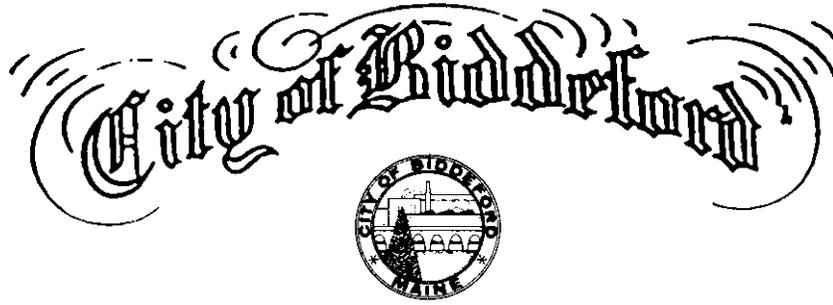
- (1) Restaurants; or
- (2) Businesses at which food sales are an incidental part of the business. Food sales will be considered to be "incidental" if such sales comprise no more than 2 percent of the business's gross sales in the City of Biddeford as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.

#### **Sec. 58-110 Restriction on Single-Use Carryout Bags.**

Except as provided in Sec. 58-111 and Sec. 58-112, no store, as defined above, shall provide or sell a Single Single-Use Carryout Bag made of plastic that does not meet all the criteria as a Reusable Bag, as defined above, to a customer at the checkout stand, cash register, point-of-sale point-of-sale or other point of departure for the purpose of transporting food, goods or merchandise out of the establishment.

#### **Sec. 58-111 Exemptions Permitted Bags**

- (a) A store may, at its discretion, make available for sale to a customer a Single Use PAPER Carryout Bag and may choose to charge for a PAPER Carryout Bag a uniform charge of five cents (\$.05) per bag. a Reusable Bag or a paper bag either for free or for a fee at the checkout stand, cash register, point-of-sale or other point of departure for the purpose of transporting goods and merchandise out of the store.



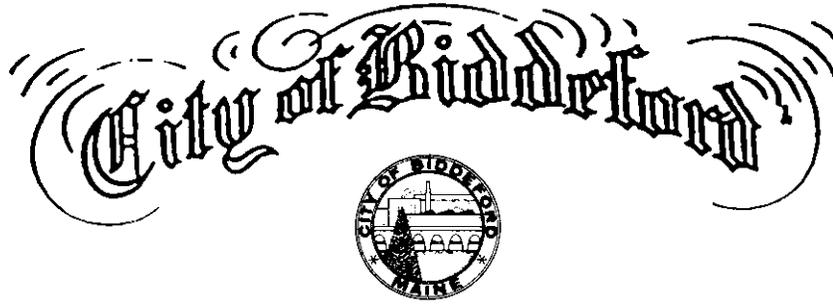
- (b) All monies collected by a store through the sale of Reusable Bags or paper bags for ~~Single Use Carryout PAPER Bags~~ under this Section may be used by the store for any lawful purpose.
- (c) All stores must post signage clearly indicating the per bag charge for ~~Single Use Carryout PAPER Bags~~ paper bags, if a fee is to be charged.
- (d) Notwithstanding this Section, no store may make available for sale a ~~Single Use Carryout PAPER Bag~~ paper bag unless the amount of the sale of the ~~Single Use Carryout PAPER Bag~~ paper bag is separately itemized on the sale receipt if a fee is charged.
- (e) Nothing in this Section shall be construed to prohibit customers from using bags of any type that the customer brings to the store for their own use or for carrying away from the store food, goods or merchandise that are not placed in a bag provided by the store.
- (f) ~~Carryout bags for take-out meals from a restaurant or food ready to eat carried out from a business that prepares meals on-site for sale to the public are exempt from the definitions of a Single Use Bag.~~

**Sec. 58-~~111~~ 112 Exemptions.**

- (a) A store shall be exempt from the provisions of this Ordinance, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety in consultation with the Emergency Management Director for the City.
- (b) A store is allowed to draw down and deplete existing inventory of single-use plastic bags by <insert date; possibly September 30, 2019>.

**Sec. 58-~~112~~ 113 Violations and Enforcement.**

The Code Enforcement Officer or his/her designee(s) shall have the primary responsibility for enforcement of this Ordinance. If the Code Enforcement Officer or his/her designee(s) determines that a violation of this Ordinance has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Ordinance shall be subject to the penalties set forth below.



Violations of this Ordinance shall be punishable by fines as follows:

- (1) A fine not exceeding \$250 for the first violation in a one-year period;
- (2) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period. Each day that a violation occurs will be considered a subsequent violation.

NOTE: This item was reviewed by the Policy Committee at their March 18, 2019 meeting and voted unanimously to recommend passage by the Council.

**April 2, 2019**

Motion by Councilor Belanger, seconded by Councilor Clearwater to grant the first reading of the ordinance amendment.

Vote: 5/3; Councilors McCurry, Swanton and Quattrone opposed.

Councilors St. Cyr, Clearwater, Belanger, Ready and Seaver in favor.

(Councilor Lessard had not arrived yet)

Motion carries.

**April 16, 2019**

Motion by Councilor Clearwater, seconded by Councilor Ready to grant the second reading of the ordinance amendment.

Vote: 5/3; Councilors Lessard, Quattrone and Swanton opposed.

Councilors St. Cyr, Clearwater, Belanger, Ready and Seaver in favor.

Motion carries.

Attest by: \_\_\_\_\_

**Carmen J. Morris, City Clerk**