

ADMINISTRATIVE ORDER NO. 53-13-03-F
of the
City Manager

ADOPTION OF PLASTIC BAG USE ADMINISTRATIVE RULE R-6.850.

The City Manager of the City of Eugene finds that:

A. Section 2.019 of the Eugene Code, 1971 ("EC"), authorizes the City Manager to adopt rules for implementation of any provisions of that Code.

B. Following the procedures set forth therein, on February 7, 2013, I issued Administrative Order No. 53-13-03 proposing the adoption of Plastic Bag Use Administrative Rule R-6.850, in order to implement the provisions of EC 6.850 through 6.865.

C. Notice of the proposed Rule adoption was given by making copies available to any person who had requested such notice, any business possessing a license issued pursuant to the Rule, and by publication of the Notice in the Register Guard Newspaper on February 18, 19, 20, 21, and 22, 2013. The Notice advised that written comments would be received for a period of 15 days from the date of the first publication. Thirty-nine comments were received within the time and in the manner provided in the Notice, to which I make the following findings:

Comments Concerning Maintaining Pass-Through Fee Records. Three comments voiced opposition to the Rule's requirements concerning the retail establishment's responsibilities to maintain records showing pass-through fees collected on paper bags. They opined that the requirement would be burdensome to the retailer and the cost would be passed on to the customer.

Findings. Record of the pass-through fees will allow City staff to assess the Ordinance and make changes in the future if necessary. Therefore, no changes are being made to the Rule as a result of these comments.

Comments Concerning the Pass-Through Fee. Three comments were submitted opposing the pass-through fee.

Findings. The pass-through fee was established by Ordinance adopted by the City Council and cannot be amended by this Rule.

Comments Concerning Plastic Bag Exemptions. One comment requested an exemption for plastic bags used for bagging books to protect them from moisture. One comment requested an exemption for oversized plastic bags used for bagging large format art paper, mat board, foam core, and art poster board, also to protect them from moisture.

Findings. The bag exemptions were established by Ordinance adopted by the City Council and cannot be amended by this Rule. However, it should be noted that plastic bags with a minimum plastic thickness of 4.0 mils. are allowed under the Ordinance. If use of such bags is not feasible, the Rule allows retail establishments to apply for a one-year exemption, during which time the Council could be asked to revise the Code to address this concern.

General Comments Regarding the Ordinance. Twenty-three comments objected to the bag ban Ordinance. Twelve comments were in favor of the Ordinance. One comment was received suggesting that the charge for paper bags be varied depending upon the size of the bag. Two comments were received suggesting that plastic bags made of biodegradable material be made available.

Findings. These comments do not address any of the proposed Rule provisions. Therefore, no changes are being made to the Rule as a result of these comments.

D. Although no changes are being made to the Rule as a result of comments submitted, the definition of "carryout bag" in the proposed Rule is being revised to remove an inconsistency with the Code.

Based upon the above findings, the findings in Administrative Order 53-13-03, and the authority of EC 2.019, effective May 1, 2013, Plastic Bag Use Administrative Rule R-6.850 is adopted to provide as follows:

PLASTIC BAG USE ADMINISTRATIVE RULE R-6.850

R-6.850-A. Definitions.

In addition to the definitions contained in Section 6.850 of the Eugene Code, 1971 ("EC"), as used in this Rule, the following words and phrases mean:

Carryout bag. Any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. "Carryout bag" does not include:

- (a) Bags used by consumers inside retail establishments to:
 - 1. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
 - 2. Contain or wrap frozen foods, meat, fish, whether packaged or not;
 - 3. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - 4. Contain unwrapped prepared foods or bakery goods; or
 - 5. Pharmacy prescription bags;
- (b) Laundry-dry cleaning bags or bags sold in packages containing multiple bags intended for use as garbage waste, pet waste, or yard waste bags;
- (c) Product bags.

R-6.850-B. Retail Establishment Requirements.

1. Each retail establishment shall maintain records showing pass-through fees collected.
2. Each retail establishment shall store the records for not less than three years.
3. Each retail establishment shall make available for inspection by the City Manager upon request:
 - a. All records the retail establishment is required to maintain under Subsection 1 of this Section; and
 - b. Any inventory of product, carryout, and reusable bags.

R-6.850-C Undue Hardship.

1. EC 6.865(e) allows for Eugene retail establishments to request an exemption from the requirements set forth in EC 6.855 and EC 6.860 for up to a one-year period. In no event shall the exemption last longer than April 30, 2014.
2. Retail establishments seeking an exemption shall electronically submit an Exemption Request to the City of Eugene at wasteprevention@ci.eugene.or.us. To be deemed complete, the Exemption Request must include:
 - a. The name, address and type of the retail establishment;
 - b. A detailed statement describing:
 - (1) The reason(s) meeting the code requirements would create an undue hardship or practical difficulty;
 - (2) Any and all actions taken by the business to overcome the hardship;
 - (3) How often the business purchases single use plastic Carryout bags, when the last order of bags was made, and how many bags were ordered.
 - c. If a business is requesting an exemption for multiple locations, each location must be identified within the Request.
3. The City may deny an exemption request based upon a finding that:

- a. The Request is materially incomplete or inaccurate; or
- b. The circumstances do not create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances.

4. Upon receipt of a complete request, the City shall provide written notice to the applicant of approval or denial of the request. The notice shall state the reason for approval or denial.

R-6.850-D. Enforcement.

1. Pursuant to EC 2.018 and EC 6.995, and Administrative Civil Penalty Administrative Rule R-2.018, the City may impose administrative civil penalties on responsible persons for violation of any provision of EC 6.850 through EC 6.865.

2. Each day a violation occurs or continues constitutes a separate violation. Each customer for which a violation occurs constitutes a separate violation.

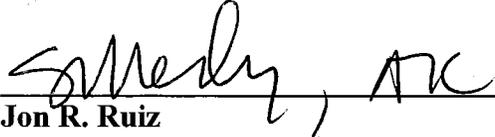
3. Notwithstanding the guidelines for administrative civil penalties contained in Administrative Civil Penalty Administrative Rule R-2.018, if a civil penalty is deemed by the City Manager or designee to be excessive in relationship to the nature of the violation, the City Manager or designee may reduce the fine based on consideration of the following criteria:

- a. Whether the violation results in benefits to the responsible party, economic or otherwise;
- b. Whether the violation was isolated and temporary or repeated and continuous;
- c. The length of time from prior violations;
- d. The magnitude and seriousness of the violation;
- e. The costs of investigation of the violation;
- f. Other relevant, applicable evidence bearing on the nature of seriousness of the violation.

5. A person against whom an administrative civil penalty has been imposed may appeal the decision according to the procedures described in EC 2.018.

6. A person against whom an administrative civil penalty has been assessed must pay the penalty within fifteen days of notice from the City. After the fifteenth day, interest will accrue on unpaid amounts.

Dated this 10 day of March, 2013.



Jon R. Ruiz
City Manager