

Ord. # 5709

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF
MEMPHIS CREATING ARTICLE VII, CHAPTER 36, OF THE
MEMPHIS CODE OF ORDINANCES ENTITLED
PLASTIC CHECKOUT BAG FEE**

WHEREAS, Cities across the country and abroad have implemented carryout bag fees, bans, and taxes as a mechanism to modify consumer behavior and decrease the number of plastic bags that are having a negative and detrimental impact on their communities; and

WHEREAS, Memphis should be equally concerned about the negative consequences to the environment and the time and costs burden that plastic bags pose on our municipal trash and recycling operations; and

WHEREAS, Memphis recognizes the short- and long-term conservation needs of Memphis' Mississippi River waterfront, and in an effort to ensure sustainable shepherding of the city's environmental treasures.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS That Chapter 36, of the Code of Ordinances, City of Memphis, pertaining to Taxes and Licenses is hereby amended by adding a new Article VII entitled "Plastic Checkout Bag Fee" as follows:

Section 36-130. Definitions.

Whenever any of the following words, terms or phrases are used in this chapter, they shall have the following meanings:

"Customer" means any person who purchases tangible personal property from a store.

"Department" means the Department of Finance of the City.

"Checkout bag" means a plastic carryout bag.

"Plastic carryout bag" means any plastic bag provided by a store to a customer for the purpose of carrying goods out of the store.

The term “plastic carryout bag” does not include bags that are ordinarily intended and designed for use by customers inside a store to:

- (1) package loose bulk items, such as fruit, vegetables, nuts, grains, candy, cookies or small hardware items;
- (2) contain or wrap frozen foods, meat or fish, whether prepackaged or not;
- (3) contain or wrap flowers, potted plants or other damp items;
- (4) segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a bag; or
- (5) contain unwrapped prepared foods or bakery goods.

Nor does the term “plastic carryout bag” include:

- (i) newspaper bags;
- (ii) dry cleaning or garment bags;
- (iii) bags provided by a pharmacist to contain prescription drugs;
- (iv) bags sold in packages containing multiple bags intended for use as garbage bags, pet waste bags or yard waste bags;
- (v) bags provided by a dine-in or take-out restaurant to contain food or drink purchased by the restaurant's customers;
- (vi) bags of any type that customers bring to a store for their own use or to carry away from the store goods that are not placed in a bag provided by the store;
- (vii) plastic liners that are permanently affixed, or designed and intended to be permanently affixed, to the inside of a particular bag; or
- (viii) bags with a retail price of at least fifty cents (\$0.50) each.

“Purchaser” means any person who uses a plastic checkout bag in a retail sale.

“Retail sale” means any sale to any person for use or consumption, and not for resale.

“Store” means a drug store, supermarket or retail establishment that has over 2,000 square feet of retail space or is part of a chain, and that provides carryout bags to its customers as a result of the sale of a product.

“Use” of a checkout bag occurs when a store sells or gives (i.e., does not charge for the transfer) the checkout bag to a customer and the customer departs the store with such bag.

Section 36-131. Fee imposed.

A fee is hereby imposed on the retail sale or use of checkout bags in the City. The fee shall be paid by the user. The fee shall be imposed at the rate of five cents (\$0.05) per plastic checkout bag sold or used in the City.

Section 36-132. Liability for payment.

When a checkout bag that is sold by a store to a customer, the fee shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the

“Checkout Bag Fee”. Receipts must indicate the number of plastic checkout bags provided and the total amount of the fee charged.

Section. 36-133. Collection, remittance and payment.

- A. The fee should be remitted monthly to the City of Memphis Treasurer.
- B. Businesses shall remit \$0.04 per plastic checkout bag (retaining the \$0.01 collected per bag for compliance costs).
- C. Checkout bag fee will become effective January 1, 2020, with the first payment due on a monthly basis, beginning February 1, 2020.
- D. Non-compliance with the reporting and payment requirements set forth in this Section shall subject such business to a \$50.00 penalty per location, compoundable for each reporting period, in addition to all other penalties and interest that may be due.

Section. 36-134. Books and records.

Every person required to collect the fees imposed by this chapter shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the liability or any exemption that may be claimed. All such books and records shall be kept in the English language and, at all times during regular business hours, shall be subject to and available for inspection by the Department.

Section 36-135. Exemptions and credits.

- A. This fee shall not apply to the extent it would violate the United States Constitution or the Constitution of the State of Tennessee.
- B. This fee shall not apply to the retail sale or use of plastic checkout bags that are used to carry items purchased pursuant to the Supplemental Nutritional Assistance Program or a similar governmental food assistance program.
- C. This fee shall not apply to persons 65 years of age or older

Section 36-136. Deposit of funds.

All proceeds resulting from the imposition of this fee, including interest and penalties, shall be deposited in the City's corporate fund and used for the benefit of draining improvements and environmental reduction, which may include conservation and education programs.

SECTION 2. Severability. The provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. That this ordinance shall take effect January 1, 2020.