

7/28/2014
7/8/2014

66-O-14

AN ORDINANCE

Adding Chapter 25 to Title 8 of the Evanston City Code Regulating Disposable Plastic Shopping Bags

SECTION 1: Legislative Statement.

The City of Evanston (the “City”) determined that the production, use, and disposal of disposable plastic shopping bags have significant adverse impacts on the environment. The City determined that to discourage and decrease the use of disposable plastic shopping bags within the City, it is necessary to regulate such use. The City Strategic Plan, adopted pursuant to Resolution 21-R-06, states that the City’s Natural Resources Vision is to be known as “the Green City” and commits the City to embracing the best ecological practices and policies in government, services and infrastructure. The City’s Strategic Plan has a goal to “protect and optimize the City’s natural resources and built environment, leading by example through sustainable practices and behaviors,” with the specific objective to “identify and utilize new practices that will improve the quality of life and enhance the City’s sustainability. In recognition of the City Strategic Plan’s goals and the need to regulate the use of disposable plastic shopping bags, this ordinance hereby creates a process to regulate disposable plastic shopping bags.

Article VII, Section (6)a of the Illinois Constitution of 1970 states that, “a home rule unit may exercise any power and perform any function pertaining to its government and affairs.” As a home rule unit, the City of Evanston’s powers shall be

construed liberally. *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992). This ordinance is presumed constitutional and the burden of rebutting that strong presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008). It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid. *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747, (2nd Dist. 1991). A court has a duty to uphold the constitutionality of a statute/ordinance when reasonably possible, and if a statute's/ordinance's construction is doubtful, the court will resolve the doubt in favor the statute's/ordinance's validity. *Id.* citing to *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 291 (2003).

The City Council finds that that there is a compelling governmental interest in implementing reasonable regulations on the use of disposable plastic shopping bags within the City of Evanston and that such regulations are essential to discourage and decrease the use of disposable plastic shopping bags within the City. Said regulations are in the best interest of the health, safety, and welfare of City residents and these regulations reduce the adverse impacts of disposable plastic shopping bags on the environment and the City.

SECTION 2: Ordinance 66-O-14 shall be in full force and effect, as follows:

With regard to individual stores subject to this Ordinance with a floor area whose square footage exceeds 10,000 square feet, this Ordinance shall take full force and effect on August 1, 2015.

SECTION 3: Title 8 of the Evanston City Code of 2012, is hereby amended to add Chapter 25 as follows:

8-25-1: TITLE:

This Chapter shall be titled and referred to as the "Plastic Shopping Bag Ordinance."

8-25-2: PURPOSE AND INTENT:

The purpose of this Chapter is to discourage the generation of waste in the form of disposable plastic shopping bags by creating regulations to discourage and decrease the use of disposable plastic shopping bags.

8-25-3: DEFINITIONS:

For the purposes of this Chapter, the words and terms listed shall have the meanings ascribed to them in this Section:

<i>CHAIN STORE ORGANIZATION.</i>	(1) Three or more stores having common ownership, or (2) any store, regardless of ownership, that is part of a franchise.
<i>COMPOSTABLE PLASTIC BAG.</i>	Any bag that (1) when placed with other biodegradable or decaying natural materials will be broken down into simple organic components by biological processes, and (2) meets the current American Society for Testing and Materials (ASTM) D6400 Standard Specification for Compostable Plastics, and (3) has been certified as a compostable product by the Biodegradable Products Institute ("BPI"), as evidenced by the presence on the bag of the BPI Commercial Logo, indicating that the bag is "commercially compostable" or "compostable in an industrial composting facility."
<i>CUSTOMER.</i>	Any person purchasing goods from a store.
<i>DISPOSABLE PLASTIC SHOPPING BAG(S).</i>	Any bag made predominantly of plastic derived from either petroleum or a biologically based source, such as corn or other plant sources, which is provided to a customer at the point of sale. The term "disposable plastic shopping bag" includes

	(1) degradable plastic bags, and (2) biodegradable plastic bags that are not commercially compostable. The term "disposable plastic shopping bag" does not include (i) commercially compostable plastic bags, (ii) reusable bags, (iii) produce bags, or (iv) product bags. As used in this definition: The term "produce bag" or "product bag" means any bag without handles used exclusively to carry produce, meats or other food items to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.
<i>OPERATOR.</i>	The person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
<i>RECYCLABLE.</i>	Material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. As used in this definition, the term "recycling" does not include burning, incinerating, converting or otherwise thermally destroying solid waste.
<i>RECYCLABLE PAPER BAG(S).</i>	A paper bag that meets all of the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society for Testing and Materials (ASTM) D6400 Standard Specification for Compostable Plastics; (4) is accepted for recycling in curbside programs in the county; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of post-consumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.
<i>POST-CONSUMER RECYCLED</i>	A material that would otherwise be

<i>MATERIAL.</i>	destined for solid waste disposal, having completed its intended end use and product life cycle. The term "post-consumer recycled material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
<i>REUSABLE BAG.</i>	A bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses which, for purposes of this definition, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the country where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.
<i>STORE.</i>	A retail establishment with a floor area whose square footage exceeds 10,000 feet, other than an establishment set forth in Section 8-25-4, which sells perishable or non-perishable goods, including but not limited to establishments operating under the following uses as defined in Section 6-18-3: Commercial Shopping Center, Food Store Establishment, Pawn Broker, Retail Goods Establishment, or Retail Services Establishment.

8-25-4: EXEMPTIONS:

This Chapter shall not apply to (1) any dine-in or take-out restaurant, or (2) any store that is not a chain store organization.

8-25-5: DISPOSABLE PLASTIC SHOPPING BAGS PROHIBITED:

No store shall provide a disposable plastic shopping bag to any customer for the purpose of enabling the customer to carry away goods from the point of sale.

8-25-6: TYPES OF CARRYOUT BAGS REQUIRED:

Each operator shall provide reusable bags, recyclable paper bags or commercially compostable plastic bags, or any combination thereof, to customers for the purpose of enabling the customer to carry away goods from the point of sale. Provided, however, that this Section shall not apply if the operator does not provide disposable plastic shopping bags of any type to its customers.

8-25-7: PERMITTED BAGS:

Nothing in this Chapter shall be construed to prohibit customers from using bags of any type that the customer brings to the store for their own use or from carrying away from the store goods that are not placed in a bag provided by the store.

8-25-8: PENALTIES:

Any person who violates any provision of this Chapter shall be subject to a fine of \$150.00 per each offense.

8-25-9: ENFORCEMENT:

The City of Evanston Health Department and the City of Evanston Community Development Department are authorized to enforce this section.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: The findings in this Ordinance, and the legislative Record, are declared to be prima facie evidence of the law of the City of Evanston, and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 6: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

Introduced: _____, 2014

Approved:

Adopted: _____, 2014

_____, 2014

Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene, City Clerk

W. Grant Farrar, Corporation Counsel