

ORDINANCE NO. C 2018 - _____

AN ORDINANCE AMENDING TITLE 4 OF THE GALLUP CITY CODE BY ADDING A NEW CHAPTER 11 WHICH PROHIBITS THE USE OF SINGLE USE PLASTIC CARRYOUT BAGS BY RETAILERS, ESTABLISHING EXEMPTIONS FROM THE ORDINANCE'S REQUIREMENTS, ESTABLISHING A PENALTY, AND PROVIDING FOR AN OPERATIVE DATE SIX MONTHS FROM THE DATE OF ADOPTION

WHEREAS, the City Council has the power and authority to make regulations to secure the general health and public health, safety and welfare of the citizens and pursuant to N.M.S.A. §3-18-1, et seq.

WHEREAS, the City Council of the City of Gallup finds that the proliferation of the use of single use plastic carryout bags by commercial retail businesses within the City contributes to litter upon both public and private land; and

WHEREAS, the City Council finds that because of the nature of plastic bags, wind conditions make it likely that such litter will move around the City, presenting a continuing effect of magnifying the amount of litter within the City, and causing the City to appear unsightly; and

WHEREAS, the City Council finds that the proliferation of plastic bag litter has a negative effect upon the residents of the City by creating an aesthetically displeasing environment; and

WHEREAS, the City Council finds that there is a likelihood that the unsightly appearance of the City will have a detrimental effect on tourism, with negative economic consequences for the City and its citizens; and

WHEREAS, the City Council finds that a set of reasonable regulations designed to reduce the use of single-use plastic carryout bags by retail establishments will be beneficial to the City; and

WHEREAS, the City Council finds that the use of reusable bags and recyclable paper grocery bags by commercial establishments in the City would lessen the long term effects of litter, and reduce deposits in the regional landfill; and

WHEREAS, the City Council has deemed that the amendments to the City's Code of Ordinances as provided for herein are necessary for the health, safety and welfare of the citizens of the City;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO, that Title 4 of the City code be Amended to include a new Chapter 11.

4-11-1 SHORT TITLE: This Chapter may be cited as the "Single Use Bag Ordinance."

4-11-2 DEFINITIONS: For the purposes of this Ordinance, the following words shall have the following meanings:

(A) *Single-use plastic carryout bag* means a carryout bag made of plastic that is provided by a retail establishment to a customer at the point of sale or checkout that is neither intended nor suitable or durable for continuous reuse as a carryout bag or a plastic bag that is less than 2.25 mils thick.

(B) *Reusable bag* means a bag with handles that is specifically designed and manufactured for multiple reuse and is either:

- i. Made of cloth or other machine washable fabric;
- ii. Made of durable plastic that is at least 2.25 mils thick; or
- iii. Other durable material suitable for reuse.

(C) *Recyclable paper bag* means a paper bag that meets the following requirements:

- i. Contains a minimum average of 40 percent post-consumer recycled paper content; or;
- ii. is certified by either the Forest Stewardship Council or Sustainable Forestry Initiative.

(D) The following bags are excluded from this ordinance:

- i. Paper bags or plastic bags provided by pharmacies for the purpose of containing medications or other prescriptions;

- ii. Paper bags provided for the containment of carryout beverages;
- iii. Door hanger bags, newspaper bags, or packages of multiple bags for use as garbage, pet waste, or yard waste;
- iv. Garment or laundry bags from any material;
- v. Plastic bags provided to effect convenience and food safety by preventing contamination from any bulk, cooked, chilled, frozen or raw food.
- vi. Paper bags customarily provided by a retail establishment as its primary bag as of the effective date of this ordinance.
- vii. Bags used by nonprofit organizations to distribute food, grocery products or other household items.

(E) *Retail establishment* means any retail business including, without limitation, groceries, clothing, household goods, or personal items of any kind that are sold directly to a customer. Examples include, but are not limited to, department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, and farmers markets. For purposes of this Ordinance, food banks, public eating establishments defined as restaurants, take-out food establishments, or any other business that receives 90% or more of its revenue from the sale of food which is prepared on the premises, to be eaten on or off its premises, are not defined as retail establishments.

(F) *Person* shall mean a natural person operating a retail business, a business entity of any character operating a retail establishment, and any individual branch, outlet, or location of a retail business located within the City.

Sec 4-11-3. MANDATORY USE OF REUSABLE BAGS AND RECYCLABLE PAPER BAGS.

(A) All covered retail establishments shall provide only the following bag types at checkout to customers: reusable bags, recyclable paper bags and/or cardboard boxes.

(B) Nothing in this section shall be read to preclude retail establishments from making reusable bags available for sale to customers.

Sec 4-11-4. ENFORCEMENT, PENALTIES, AND ADMINISTRATIVE REMEDIES.

(A) Any person who violates this Ordinance shall be guilty of a municipal offense, and upon conviction thereof, said person shall be punished by a fine not less than \$100.00 nor more than \$500 for each offense. Each day of violation shall be considered a separate offense.

(B) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Ordinance, and the City shall be entitled to recover costs and attorney's fees incurred therein.

(C) If a person or retail establishment has evidenced a pattern of non-compliance with the provisions of this Ordinance, the Code Enforcement Officer of the City shall refer the matter to the City Council, who may, after public hearing, revoke the business license or registration of the offending party. A pattern of non-compliance may be evidenced by multiple violations of this Ordinance as well as proof of administrative attempts at gaining compliance.

Sec 4-11-5 OPERATIVE DATE.

All of the requirements set forth in this Ordinance shall become effective six (6) months after its adoption date.

Sec 4-11-6 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional.

PASSED, ADOPTED AND APPROVED on this _____ day of _____, 2018.

CITY OF GALLUP

Jackie McKinney, Mayor

ATTEST:

Alfred Abeita II, City Clerk

Vote:

Mayor McKinney	_____
Councilor Garcia	_____
Councilor Landavazo	_____
Councilor Kumar	_____
Councilor Palochak	_____

Motion made by: _____

Seconded by: _____