

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 22-59**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE  
CITY OF BATAVIA BY ADDING A NEW CHAPTER 5D TO TITLE 3  
IMPLEMENTING A RETAIL SINGLE-USE BAG PROGRAM**

**ADOPTED BY THE  
MAYOR AND CITY COUNCIL  
THIS 21<sup>st</sup> DAY OF NOVEMBER 2022**

Published in pamphlet form  
by authority of the Mayor  
and City Council of the City of Batavia,  
Kane & DuPage Counties, Illinois,  
this 22<sup>nd</sup> day of November, 2022

Prepared by:  
  
City of Batavia  
100 N. Island Ave.  
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 22-59**

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE  
CITY OF BATAVIA BY ADDING A NEW CHAPTER 5D TO TITLE 3  
IMPLEMENTING A RETAIL SINGLE-USE BAG PROGRAM**

**WHEREAS**, the City of Batavia, Kane County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City's home rule powers and functions as granted in the Constitution of the State of Illinois; and

**WHEREAS**, the City has determined that the production, use, and disposal of disposable plastic shopping bags have significant adverse impacts on the environment; and

**WHEREAS**, the City has determined that to discourage and decrease the use of disposable plastic shopping bags within the City, it is necessary to regulate such use; and

**WHEREAS**, the City has determined that it is not desirable to replace the use of disposable plastic shopping bags with paper bags; and

**WHEREAS**, the City Council finds that there is a compelling governmental interest in implementing reasonable regulations on the use of disposable shopping bags within the City and that such regulations are essential to discourage and decrease the use of disposable plastic shopping bags within the City and to compensate the City for the costs it incurs to clean-up bag waste and to otherwise address the negative impacts of bag-waste on the City; and

**WHEREAS**, the City Council finds that such regulation will have the most impact if it addresses the largest generators of plastic bag use in the City; and

**WHEREAS**, 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 shopping bags on the environment and the City; and

**WHEREAS**, environmental conservation and preservation is one of Batavia's core values and the City's vision is to remain a connected green community; and

**WHEREAS**, the City's commitment is evidenced by Batavia being among the first communities in Illinois to pass resolutions adopting the Greenest Regions Compact and supporting the initiatives of the Climate Action Plan; and

**WHEREAS**, the City's Environmental Commission presented a proposal for implementation of a single-use bag fee as a means of reducing waste and other negative effects caused by single-use bags; and,

**WHEREAS**, after the Environmental Commission’s presentation they worked with City staff and the Batavia Chamber of Commerce on a plan to provide an educational campaign and drafted legislation to implement a single-use bag fee; and

**THEREFORE**, BE IT ORDAINED by the CITY COUNCIL of the CITY OF BATAVIA, Kane County, Illinois, as follows:

SECTION 1: Recitals Incorporated. The above recitals are incorporated herein as though fully set forth.

SECTION 2: City Code Amended. Title 3 – Business and License Regulations of the City of Batavia City Code is hereby amended to add Chapter 5D – Retail Single-Use Bag Program as follows:

**TITLE 3: BUSINESS AND LICENSE REGULATIONS**  
**CHAPTER 5: MERCHANTS DEALING IN PRODUCTS**  
**ARTICLE D: RETAIL SINGLE-USE BAG PROGRAM**

SECTION

- 3-5D-1. Definitions.
- 3-5D-2. Carryout single-use bag fee.
- 3-5D-3. Remittance.
- 3-5D-4. Failure to Pay Fee
- 3-5D-5. Required signage for retail establishments.
- 3-5D-6. Exemptions.
- 3-5D-7. Reusable bags.
- 3-5D-8. Permitted bags.
- 3-5D-9. Prohibited conduct.
- 3-5D-10. Books and records.
- 3-5D-11. Penalties.
- 3-5D-12. Repealer.

**3-5D-1. Definitions.**

The words and phrases set forth below are hereby defined as follows for purposes of this article:

CARRYOUT SINGLE-USE BAG means a bag that is not a reusable bag provided by a retail establishment to a customer at the point of sale, pickup, or delivery to carry purchased items. The term carryout single-use bag includes compostable and biodegradable bags (including paper). A carryout single-use bag does not include:

- (1) A bag provided by a pharmacist that contains a prescription drug;
- (2) Any newspaper bags, door hanger bags, dry cleaning and garment bags, and bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste;
- (3) A bag provided at the point of sale at a seasonal event, such as a farmers market, street fair, or yard sale, or by an occasional or temporary retailer;
- (4) A paper or plastic bag that a restaurant gives a customer to take prepared or leftover food or drink from the restaurant; or
- (5) Bags used by customers inside stores to:
  - a. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
  - b. Contain or wrap frozen foods, meat, or fish;
  - c. Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
  - d. Contain unwrapped prepared foods or bakery goods; or
  - e. A non-handled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a carryout single-use bag or reusable bag.

CUSTOMER(S) means any person purchasing goods from a store.

RETAIL ESTABLISHMENT means any business located within Batavia city limits with a gross floor area of 5,000 square feet or greater, engaged in the retail sale of goods, merchandise, perishable, or non-perishable goods, including, but not limited to, clothing, food and personal items, directly to customers. Retail establishment includes any supermarket, convenience store, shop, or service station. A retail establishment does not include restaurants, lunchrooms, cafes or other establishments located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with a public dining area; seasonal events, such as a farmers' markets, street fairs, or yard sales; or by an occasional or temporary retailer.

REUSABLE BAG A means bag with handles that is specifically designed and manufactured for multiple re-use and is made of cloth, fiber, or other machine washable fabric.

**3-5D-2. Carryout single-use bag fee.**

- A. A fee in the amount of ten cents is imposed on each customer for each carryout single-use bag that a retail establishment provides to a customer.
- B. Each retail establishment must collect the amount of the fee imposed pursuant to this section when the customer makes any payment for goods in person, through the Internet, by telephone, by

facsimile, or by any other means. The retail establishment must hold the fees required to be collected under this Section in trust for the City until remitted as required by this article.

C. Each retail establishment may retain four cents (4¢) from each ten cent (10¢) fee that the store collects.

D. A retail establishment must indicate on the customer's transaction receipt the number of carryout bags that the store provided to the customer and the total amount of fee assessed under this section.

E. A retail establishment shall not refund to the customer any part of the carryout single-use bag fee, nor shall the retail establishment advertise or state to customers that any part of the carryout single-use bag fee will be refunded to the customer.

F. A retail establishment shall not exempt any customer from any part of the carryout single-use bag fee for any reason.

### **3-5D-3. Remittance.**

A. On or before the 25th of each month, each retail establishment must remit to the Director the full amount of the fee collected for all carryout bags provided to a customer during the previous month, less the amount retained under Section 3-5D-2.

B. Each remittance must be accompanied by a report of all transactions subject to the fee. The report must be on a form supplied by the Director and must contain the number of bags supplied or provided to customers, the amount of the fee required by this Chapter to be collected, notice regarding the applicability of the Illinois Freedom of Information Act, and any other information the Director requires to assure that the required fee has been remitted to the City.

C. If the retail establishment does not file a required report within the time required by this Chapter, the Director may estimate the amount of fee due. The Director may base the estimate on a reasonable projection of bags supplied or provided and may consider fees reported by other stores.

D. The Director may send a notice of the estimated fee due, including penalties pursuant to Section 3-5D-4 below, to the retail establishment's last known address. The retail establishment must pay the estimated fee, including any interest and penalty assessed by the Director, within ten (10) days after the notice is sent.

E. Funds received by the City pursuant to this article shall be deposited into the City's Environmental Management Fund.

### **3-5D-4. Failure to Pay Fee**

If for any reason any fee is not paid when due by a retail establishment, a penalty at the rate of two percent (2%) per month on the amount of the fee which remains unpaid shall be due and owing in addition to other penalties authorized by this article.

### **3-5D-5. Required signage for retail establishments.**

Every retail establishment subject to the collection of the carryout single-use bag fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the city's carryout single-use bag fee.

**3-5D-6. Exemptions.**

A retail establishment may provide a carryout single-use bag to a customer at no charge to that customer if the customer provides evidence that he or she is a participant in an Illinois Food Assistance Program.

**3-5D-7. Reusable bags.**

A retail establishment may provide reusable bags to its customers for the purpose of enabling the customer to carry away goods from the point of sale. The fee imposed pursuant to section 22-302 above shall not apply to reusable bags.

**3-5D-8. Permitted bags.**

Nothing in this article shall be construed to prohibit a customer from using bags of any type that the customer brings to the retail establishment for the customer's own use or from carrying away goods from the retail establishment that are not placed in a bag provided by the retail establishment.

**3-5D-9. Prohibited conduct.**

A retail establishment shall not:

- (a) Neglect or refuse to collect the fee levied under this article;
- (b) Neglect or refuse to keep complete and accurate records; or
- (c) Refuse to allow the city to inspect and audit the retail establishment's records in regards to calculating the fee under this article.

**3-5D-10. Books and records.**

Every retail establishment shall be required to collect the fee imposed pursuant to this article and shall keep accurate books and records of its business, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the fee being imposed. Each retail establishment must preserve for three years all records necessary to determine the amount of the fee due under this section. All such books and records shall be subject to and available for inspection by the city during regular business hours.

**5D-11. Penalties.**

Any person or retail establishment that violates any provision of this article shall be subject to a fine of not less than \$150.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

**3-5D-12. Repealer.**

This Chapter shall be in effect on July 1, 2023. Following the first twelve (12) months this Chapter is in effect, the City and the Environmental Commission shall review the program and shall provide a report to the City Council, no later than July 1, 2024, to allow the City Council to determine whether to alter, replace or repeal the program.