

ORDINANCE NO. 2827

AN ORDINANCE OF THE CITY OF SALISBURY AMENDING CHAPTER 5.69 OF THE SALISBURY CITY CODE TO INCLUDE EXCLUSIONS FROM THE PAPER CARRYOUT BAG FEE

WHEREAS, the ongoing application, administration and enforcement of Title 5 (Business Licenses and Regulations) of the City Code of the City of Salisbury (the “**Salisbury City Code**”) demonstrates a need for its periodic review, evaluation and amendment, in order to keep the provisions of Title 5 current, comply with present community standards and values, and promote the public safety, health and welfare of the citizens of the City of Salisbury (the “**City**”);

WHEREAS, the Mayor and Council of the City of Salisbury (the “**Mayor and Council**”) are authorized by MD Code, Local Government, § 5-202 to adopt such ordinances, not contrary to the Constitution of Maryland, public general law or public local law, as the Mayor and Council deem necessary to assure the good government of the municipality, to preserve peace and order, to secure persons and property from damage and destruction, and to protect the health, comfort and convenience of the citizens of the City;

WHEREAS, on November 28, 2022, the Mayor and Council passed Ordinance 2756 prohibiting retail establishments from providing plastic carryout bags to customers and mandating a fee be charged to the consumer for the provision of a paper carryout bag, which is now codified in Chapter 5.69 of the City Code;

WHEREAS, Chapter 5.69 went into effect July 1, 2023 and the City has determined that Chapter 5.69 requires amendment to preserve the public health and to balance such public health concerns with necessary and appropriate measures to protect the environment;

WHEREAS, the Mayor and Council find that the health, safety and general welfare of the citizens of the City will be furthered by amending Chapter 5.69 to provide for certain limited exclusions to the charging of a fee for paper carryout bags; and

WHEREAS, the Mayor and Council have determined that the amendments of chapter 5.69 of the Salisbury City Code set forth shall be adopted as set forth herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that Chapter 5.69 of the Salisbury City Code is hereby amended by adding the bolded and underlined language as follows:

Section 1. Chapter 5.69 of the Code is hereby amended as follows:

5.69.010 - Definitions:

For the purpose of this title, the following words and terms shall have the following meanings, unless another meaning is plainly intended:

“Excluded organization” means:

- A. A bona fide nonprofit fraternal, civic, war veterans', religious, or charitable organization or corporation that does not serve food to the public more often than 4 days per week except that once a year an organization may serve food to the public for up to 30 consecutive days; and
- B. A volunteer fire company that does not serve food to the public more often than 4 days per week except that once a year a volunteer fire company may serve food to the public for up to 30 consecutive days.

“Food Service Facility” means:

- A. A place where food or drink is prepared for sale or service on the premises or elsewhere; or
- B. Any operation where food is served to or provided for the public, with or without charge.

“Food Service Facility” does not include:

- A. A kitchen in a private home where food is prepared at no charge for guests in the home, for guests at a social gathering, or for service to unemployed, homeless, or other disadvantaged populations;
- B. A food preparation or serving area where food is prepared or served only by an excluded organization;
- C. A location in a farmer's market or at a public festival or event where raw agricultural products are sold; or
- D. A cottage food business.

“Plastic carryout bag” means a plastic bag that is provided by a retail establishment to a customer at the point of sale and is not a reusable carryout bag.

- A. “Plastic carryout bag” includes a compostable plastic bag that meets the specifications of the American Society of Testing and Material International Standard Specification for Compostable Plastics D6400.
- B. “Plastic carryout bag” does not include:
 - 1. A plastic bag used to:
 - i. Package bulk items, including fruit, vegetables, nuts, grains, candy, or small hardware items;
 - ii. Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
 - iii. Contain or wrap flowers, potted plants, or other damp items;
 - iv. Contain unwrapped prepared foods or bakery goods;
 - v. Contain a newspaper;
 - vi. Contain garments or dry-cleaned clothes, including suits, jackets, and dresses; or
 - vii. Contain ice.
 - 2. Plastic bags sold in packages containing multiple plastic bags; or
 - 3. A plastic bag provided by a retail establishment to take live fish, insects, mollusks, or crustaceans away from the retail establishment.

“Reusable carryout bag” means a bag with stitched handles that is specifically designed and manufactured for multiple reuse and is made of:

- A. Cloth or other washable fabric; or
- B. A durable material suitable for multiple re-use that is not made of plastic film.

“Retail establishment” means a store, a food service facility, or any other establishment that provides bags to its customers as a result of the sale of a product.

5.69.020 – Prohibition on providing plastic carryout bags

- A. On or after June 30, 2023, a retail establishment may not provide a plastic carryout bag to a customer.
- B. On or after June 30, 2023, a retail establishment shall charge, collect, and retain at least 10 cents for each paper carryout bag and reusable carryout bag that it provides to a customer.
 - 1. **Exclusions. A retail establishment shall not collect a charge required under 5.69.020(B), for any paper bag (i) a food service facility gives a customer or third party delivery service to take food sliced or prepared to order from the food service facility; (ii) a pharmacy gives to a patient or customer that contains a prescription drug; or (iii) which constitutes an essential part of the packaging of the product, the product itself, or which was packaged in such manner at the time of manufacture.**

- C. A retail establishment may not advertise, hold out, or state to the public or to a customer, directly or indirectly, that reimbursement of any part of the money collected under this section will be assumed or absorbed by the retail establishment or refunded to the customer.
- D. A retail establishment shall indicate on the consumer transaction receipt the number of paper and reusable carryout bags provided by the retail establishment and the total amount of money charged.

BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

Section 4. The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

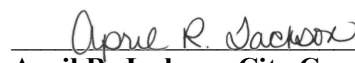
Section 5. This Ordinance shall take effect from and after the date of its final passage.

THIS ORDINANCE was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the 11th day of September, 2023 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 25th day of September, 2023

ATTEST:

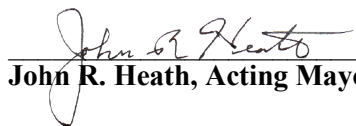


Kimberly R. Nichols, City Clerk



April R. Jackson, City Council President

Approved by me, this 2nd day of October, 2023.



John R. Heath, Acting Mayor