City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Legislation Details (With Text)

File #:	O-19-48		
Type:	Ordinance	**Status:**	Enacted
File created:	1/7/2019	**In control:**	City Council
		Final action:	4/15/2019
Enactment date:	4/22/2019	**Enactment #:**	O-2019-008
Effective date:	5/1/2019		

Title: Adding A New Article 17 To Chapter 13, ROA 1994, Limiting The Use Of Plastic Single-Use Carryout Bags; Creating An 'Albuquerque Clean & Green Business' Program; Providing For Administrative Regulations To Carry Out The Provisions (Benton, Davis, Gibson, Borrego)

Sponsors: Isaac Benton, Pat Davis

Indexes:

Code sections:

Attachments: 1. O-48, 2. O-48 Revised Ecomonic Impact Analysis.pdf, 3. O-48Enacted

Date	Ver.	Action By	Action	Result
4/22/2019	2	City Clerk	Published	
4/20/2019	2	Mayor	Signed by the Mayor	
4/18/2019	1	City Council	Sent to Mayor for Signature	
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Pass
4/15/2019	1	City Council	Amended	Fail
4/15/2019	1	City Council	Amended	Fail
4/15/2019	1	City Council	Passed as Amended	Pass
2/20/2019	1	City Council	Postponed	Pass
2/4/2019	1	City Council	Accepted with a recommendation Do Pass, As Amended	
1/28/2019	1	Finance & Government Operations Committee	Amended	Pass
1/28/2019	1	Finance & Government Operations Committee	Amended	Pass
1/28/2019	1	Finance & Government Operations Committee	Postponed	Fail
1/28/2019	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Amended	Pass

powered by Legistar™

1/7/2019	1	President	Referred
1/7/2019	1	City Council	Introduced and Referred

CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-48 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton, Patrick Davis, Diane Gibson, Cynthia Borrego

ORDINANCE

Adding A New Article 17 To Chapter 13, ROA 1994, Limiting The Use Of Plastic Single-Use Carryout Bags; Creating An 'Albuquerque Clean & Green Business' Program; Providing For Administrative Regulations To Carry Out The Provisions (Benton, Davis, Gibson, Borrego)

WHEREAS, the U.S. each year generates more than 4 million tons of plastic bags, sacks and wraps, according to the Environmental Protection Agency, and only about 13 percent of that plastic is recycled; and

WHEREAS, the majority of single-use plastic bags, straws and polystyrene containers do not biodegrade but rather persist in the environment for hundreds of years, even though they are only used for a few minutes; and

WHEREAS, thousands of single-use plastic bags, straws and polystyrene containers contribute to public litter; and

WHEREAS, a 2018 study by Clean Water Action found that the difference in cost between the most common single-use polystyrene and alternative packaging was just $0.01 (1-cent) more per unit; and

WHEREAS, the production of polystyrene creates greenhouse gases and polystyrene products take more than 500 years to degrade, even though they are only used for a few minutes; and

WHEREAS, major American companies with locations in Albuquerque, including Starbucks, Hyatt, Hilton, McDonald's and Dunkin' Donuts have announced plans to end the use of polystyrene cups and containers or single-use plastic straws; and

WHEREAS, Kroger, the parent company of Smith's Grocery that operates several Albuquerque locations, has announced plans to end the use of single-use plastic bags in all stores by 2025; and

powered by Legistar™

WHEREAS, in addition to City efforts to limit plastic waste and single-use plastic pollution in our City, the City's recycling program can also present a significant opportunity for environmental impact mitigation and community improvement, and moving forward the City should study options for improving the effectiveness of its recycling program, including but not limited to by evaluating the reasons for recyclable contamination rates and options for a City-operated recycling facility.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Enacting the "Albuquerque Clean & Green Retail Ordinance."

"§ 13-17-1 Short Title; Purpose

A. This ordinance shall be cited as the "Albuquerque Clean & Green Retail Ordinance."

B. The production and disposal of single-use plastic bags and straws creates significant environmental impacts including the contamination of the environment, ingestion and entanglement by wildlife, and widespread litter. The purpose of this ordinance is to protect and enhance the city's unique and precious environment, wildlife, and beauty through the reduction of single-use non-compostable or non-recyclable bags, and to encourage the use of reusable or sustainable options.

13-17-2 Applicability

A. Effective January 1, 2020, a business, other than a food service establishment or dry cleaner, shall not provide any plastic single-use bag for the purpose of carrying products from the point of sale or any other single-use bag for this purpose unless:

a. The bag meets standards for recycling, biodegrading, or another form of acceptable disposal as set forth by the Director of Solid Waste; and

b. The business posts at the point of sale or on each bag a notice that the bags issued pursuant to this act are recyclable or biodegradable and encourages proper disposal of the bags.

B. All city businesses are encouraged, but not required, to post notices encouraging customers to bring their own reusable shopping bags.

C. This ordinance shall not be construed to apply to plastic wrappings, bags or containers distributed by the manufacturer for packaging or preparing goods for display prior to sale.

D. This ordinance shall not be construed to restrict the Environmental Health Department from issuing public health directives.

E. A retailer shall be encouraged to waive any bag fees for persons paying with public

powered by Legistar™

assistance.

13-17-3 Creation of a Clean & Green Business Program

A. The City hereby establishes a Clean & Green Business Program.

B. Businesses may apply for certification as a Clean & Green Business, via an online form as determined by the Mayor, by:

a. Affirming compliance with this ordinance;

b. Participating in the City's commercial recycling program;

c. Posting notices at the point of sale or on public entrances encouraging the recycling of compliant single-use bags, straws and containers; and

d. Providing multi-use shopping bags, straws or containers for free for the use of customers.

C. Certified businesses shall be issued a sticker or other emblem identifying the business as a certified Albuquerque Clean & Green Business.

13-17-4 Enforcement

A. Each act in violation of this article shall constitute a separate civil violation. Civil violations of this article shall subject the owner of the offending business to the following penalties for offenses during any 36-consecutive-month period:

a. a warning;

b. a civil fine of $100 for the first offense;

c. a civil fine of $250 for the second offense and subsequent offenses.

B. Each calendar day during which the civil violation occurs shall constitute a separate and distinct offense.

C. Upon determination by the administration that a violation of this article has occurred, the administration will cause to be sent a Notice of Violation, which notice will be mailed postage pre-paid return- receipt-requested to the agent on file for the business as determined by the City of Albuquerque Business License. The notice shall contain the following information:

a. The address where the violation occurred;

b. A brief narrative of the circumstances surrounding the violation;

c. A statement regarding whether this is the first, second or subsequent offense within a consecutive 36-month period;

d. A name and phone number or title of municipal employee from whom the owner can obtain further information;

e. The address where payment for the violation may be made;

f. A statement that the owner has the right to contest the validity of the civil violation by requesting a hearing in writing within ten days of the date of mailing of the Notice of Violation; and

g. A copy of this article.

D. Any person who is issued a Notice of Violation may request that a hearing be scheduled by the city hearing officer by submitting a timely hearing request and paying a $50 hearing fee to the Independent Office of Hearings. The hearing shall be conducted by a City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The City Hearing Officer shall determine whether a violation of this article occurred. The Hearing Officer shall mail a written notice of decision to the owner within five working days of the hearing. If the Hearing Officer finds that there was no violation of this article, then the Hearing Officer shall (i) refund hearing fee and (ii) issue and date a Certificate of Compliance. If the Hearing Officer determines that a violation of this article did occur, then the Hearing Officer shall impose a fine as above prescribed.

E. Failure to pay a fine imposed by this article-whether the fine is uncontested or unsuccessfully contested-shall subject the property owner to the penalty provisions set forth in § 9 -9-11 of this code of ordinances. Each failure is considered a separate offense.”

SECTION 2. Requiring an impact study within 2 years

A. During the second-half of FY 2022, a temporary administrative committee shall convene to evaluate the impact of this ordinance and present a report to the Mayor and City Council before June 30, 2022.

B. The committee shall include:

a. The Director of Council Services, or her designee;

b. The Director of Solid Waste, or his designee;

c. The Director of Environmental Health, or his/her designee;

d. The City Council president, or her designee;

e. The CAO, or her designee;

f. A member of the Small Business Advisory Council, elected by the Council from

among its members.

C. The report shall, at a minimum and as well as can be reasonably determined, determine the number of prohibited bags and containers diverted from the public waste stream by this act, and the percentage of customers using reusable bags or containers on a regular basis. The committee shall also make recommendations for changes to this act.

SECTION 3. Public Education and Funding

A. No less than 180 days prior to the effective date, the Mayor shall initiate a public education campaign, which shall include notice to each city Solid Waste customer through bill inserts or through some similar notice, about the new regulations and encouraging the recycling of permitted single-use items.

B. The Mayor is authorized to use the Solid Waste Enterprise fund to provide education about this ordinance and use the General Fund for enforcement of the ordinance.

SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 5. COMPILATION. The ordinance amendment prescribed by SECTION 1 shall amend, be incorporated in and made part of the Revised ordinances of Albuquerque, New Mexico, 1994.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect after publication by title and general summary on January 1, 2020.

powered by Legistar™

X:\CITY COUNCIL\SHARE\CL-Staff_Legislative Staff\Legislation\23 Council\O-48final.docx