

CITY COUNCIL OVERSIGHT COMMITTEE MEETING

**MUNICIPAL BUILDING CONFERENCE ROOM
201 WEST GRAY**

THURSDAY, DECEMBER 13, 2018

4:00 P.M.

- 1. CONTINUED DISCUSSION REGARDING POSSIBLE REGULATIONS FOR THE USE OF PLASTIC BAGS.**
- 2. DISCUSSION REGARDING SHIPPING CONTAINERS IN RESIDENTIAL AREAS.**

ITEM 1

PLASTIC BAGS



TO: City Council Oversight Committee
FROM: Terry Floyd, Development Coordinator
Beth Muckala, Assistant City Attorney
DATE: December 6, 2018
SUBJECT: Single-Use Bag Fee Ordinance

At the December 13, 2018, Council Oversight Committee, staff will present information and research regarding single-use bag ordinances from peer cities, along with a preliminary draft of a single-use bag fee ordinance as a starting point for Committee discussion.

Staff and the Oversight Committee chair have gathered numerous ordinance examples from peer cities, Big XII school cities and other cities across the U.S. From that research and subsequent discussion with the Committee chair, a preliminary draft ordinance placing a fee on all single-use checkout bags is being presented for the Committee to begin discussion and provide input for future staff revision/direction.

Ordinance Proposed Fee:

The preliminary draft ordinance (included as Attachment A) places a \$0.05 fee on all single use checkout bags (with exemptions/exceptions noted later in this Memo). The proposed fee is only applicable to “Retail Stores”, and is defined in the preliminary draft ordinance as:

... a business establishment or business located within Norman city limits in a permanent building, operating year-round, that engages in the retail sale of products, including but not limited to groceries, convenience items, pharmaceuticals, clothing, personal items, and hardware...

Ordinance Exemptions and Exceptions

Although the researched ordinances are often tailored to the needs and values of each city, generally, most ordinances include exemptions and/or exceptions. Each ordinance researched also had different enforcement mechanisms and have used collected fees differently. A chart with comparison of cities researched is included as Attachment B.

The following exemptions and exceptions are included in the preliminary draft ordinance:

Exemptions in preliminary draft ordinance:

- Citizens participating in food assistance programs (WIC, SNAP, TANF, etc.)

Exceptions in preliminary draft ordinance:

Bags used by consumers inside stores to:

- Package bulk items, such as fruits, vegetables, nuts, grains, candy or small hardware items
- Contain or wrap frozen foods, meat or fish
- Contain or wrap flowers, potted plants, or other items where dampness may be a problem
- Contain unwrapped prepared foods or bakery goods
- A non-handled bag used to protect a purchased items from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag

- Bags provided by pharmacist to contain prescription drugs
- Newspaper bags, door-hanger bags, laundry-dry cleaning bags or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, yard waste bags, or personal gift or “goody” bags.

Additional exceptions in the preliminary draft ordinance for businesses include:

- Temporary vending establishment for fruits, vegetables, packaged meats and dairy
- Vendors at farmer’s markets or other temporary events
- Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be “incidental” if such sales comprise no more than 2 percent of the business’s gross sales in the city as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location;
- Domestic Oklahoma businesses or businesses that are owned 100% by Oklahoma residents that (*qualifying provisions TBD*). Determination of whether a business meets this exception shall be made by the City Manager or her/his designee.

Use of Fees and Collection Mechanism in the Preliminary Draft Ordinance

Under the DRAFT Ordinance the City’s portion of the collected fees (60%) would be submitted to the City on a quarterly basis by those establishments required to collect the fee. The business collecting the fee would retain 40% of the fee collected. The City would provide the needed forms to the stores to demonstrate compliance with the ordinance and collection information, and would have the right to inspect the store’s compliance with the program. The revenue would be paid to the Norman Municipal Authority and used solely for specific areas as outlined in the ordinance, including:

- Provide reusable bags to residents or visitors
- Educate residents, businesses, and visitors about the impact of Single-Use Bags on the City of Norman’s health and well-being, on the City of Norman’s recycling and waste disposal services, and the cost and other impacts to mitigate the effect of Single-Use bags on the City’s resources, including its drainage, transportation and storm water systems, as well as on wildlife and the environment
- Fund programs and infrastructure that allow the City of Norman to reduce waste associated with Single-Use bags
- Purchase and install equipment designed to minimize bag pollution, including recycling containers, and waste receptacles associated with Single-Use Bags
- Fund community cleanup events and other activities that reduce trash associated with Single-Use Bags
- Mitigate the effects of Single-Use Bags on the City’s resources, including its drainage, transportation and storm water systems, as well as on wildlife and the environment
- Maintain a public website that educates residents on the progress of waste reduction efforts associated with Single-Use Bags
- Fund the administration of the Single-Use Bag Fee program

A chart outlining potential revenues based on preliminary staff research and discussion with other communities is provided as Attachment C. This chart is only included to give the Committee a very rough idea of what revenue potential might be based on varying fee amounts. Additional fee collection projections will require more extensive staff research and discussion with other communities with similar fees.

Conclusion

Staff will be presenting the following information to the Council Oversight Committee as part of the December 13th meeting regarding the potential Single-Use Bag Fee Ordinance for future direction for further consideration.

Attachments

- Attachment A: Preliminary DRAFT Single-Use Bag Fee Ordinance
- Attachment B: City-by-city comparison (of cities studied)
- Attachment C: Potential Revenue

Attachment A

Ordinance No. O-1819-___

AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, ADDING SECTION 21-118 (“SINGLE-USE BAG FEES”) TO ARTICLE I OF CHAPTER 21 (“UTILITY SERVICES”) OF THE CODE OF THE CITY OF NORMAN TO ESTABLISH A 5-CENT FEE FOR SINGLE-USE BAGS AT CERTAIN RETAIL ESTABLISHMENTS AND REMITTANCE OF A PORTION OF THE FEE TO THE CITY FOR USE IN FURTHERING RECYCLING, GREEN LIVING, OR OTHER SUSTAINABILITY OBJECTIVES OF THE CITY OF NORMAN; AND PROVIDING FOR THE SEVERABILITY THEREOF.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

§ 1. That Section 21-118 of the Code of the City of Norman shall read as follows:

SEC. 21-118. – SINGLE-USE BAG FEES.

(a) Purpose and intent. It is the intent of this Section to protect the public health and safety and to faithfully implement a commitment to the City of Norman’s recycling program by addressing the retail utilization of single-use bags, which presents a significant risk of waste, litter, and cost to the city and its citizens, and further to reduce the burden to city taxpayers from costs associated with the recycling or other disposal of single-use bags.

(b) Definitions.

(i) “Single-Use Bag” means a bag that is not a reusable bag and does not include:

(A) Bags used by consumers inside stores to:

(1) Package bulk items, such as fruit vegetables, nuts, grains, candy or small hardware items;

(2) Contain or wrap frozen foods, meat or fish;

(3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;

(4) Contain unwrapped prepared foods or bakery goods; or

(5) A non-handled bag used to protect a purchased items from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag.

(B) Bags provided by pharmacist to contain prescription drugs.

(C) Newspaper bags, door-hanger bags, laundry-dry cleaning bags or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, yard waste bags, or personal gift or “goody” bags.

(ii) “Retail Store” means a business establishment or business located within Norman city limits in a permanent building, operating year-round, that engages in the retail sale of products, including but not limited to groceries, convenience items, pharmaceuticals, clothing, and hardware, and does not include:

(A) Temporary vending establishment for fruits, vegetables, packaged meats and dairy;

(B) Vendors at farmer’s markets or other temporary events;

(C) Domestic Oklahoma businesses or businesses that are owned 100% by Oklahoma residents that [REDACTED]. Determination of whether a business meets this exception shall be made by the City Manager or her/his designee.

(iii) “Reusable Bag” means a bag that is:

(A) Designed and manufactured to withstand repeated uses over a period of time;

(B) Is made from a material that can be cleaned and disinfected regularly;

(C) That is at least 2.25 mil thick if made from plastic;

(D) Has a minimum lifetime of 75 uses; and

(E) Has the capability of carrying a minimum of 18 pounds.

(iv) “Single-Use Bag Fee” means a city fee imposed and required to be paid by each consumer making a purchase from a Retail Store for each Single-Use Bag used during the purchase assessed for the purpose of mitigating the impacts of Single-Use Bags.

(c) Requirement to Collect Single-Use Bag Fee.

(i) For each Single-Use Bag provided to a customer of a Retail Store, Retail Stores shall collect, and customers shall pay, a Single-Use Bag Fee of \$0.05 at the time of any purchase.

(ii) Retail Stores shall record and provide on the transaction receipt of any such purchase the number of Single-Use Bags provided and the total amount of the Single-Use Bag Fee charged.

(iii) Except in the case of a mistaken charge, a Retail Store shall not refund to the customer any part of the Single-Use Bag Fee, nor shall the Retail Store advertise or state to customers that any part of the Single-Use Bag Fee will be refunded to the Customer.

(iv) No Retail Store may advertise or implement any discount, waiver, or reduction of the Single-Use Bag Fee required herein.

(v) A Retail Store shall not except or exempt any customer from any part of the Single-Use Bag Fee for any reason except as stated in Section 21-118(e), “Exemptions.”

(d) Collection, Retention and Remittance of Single-Use Bag Fee.

(i) A Retail Store may retain 40 percent of each Single-Use Bag Fee collected (“Retained Percent”) and may be used by the Retail Store for any lawful purpose. The Retained Percent shall not be classified as revenue for the purposes of calculating City of Norman sales tax.

(ii) The amount of the Single-Use Bag Fee charged by a Retail Store in excess of the Retained Percent shall be paid to the City and shall be used by the City only as set forth in Section 21-118(d)(iv) to implement the purpose and intent of this section and mitigate the effects of Single-Use Bags on the City of Norman. Amounts paid to the Norman Utilities Department shall be paid as follows:

(A) For those Single-Use Bag Fees charged between January 1 through March 31, payment shall be made no later than April 30 of the same year;

(B) For those Single-Use Bag Fees charged between April 1 and June 30, payment shall be made no later than July 31 of the same year;

(C) For those Single-Use Bag Fees charged between July 1 and September 30, payment shall be made no later than October 31 of the same year; and

(D). For those Single-Use Bag Fees charged between October 1 and December 31, payment shall be made no later than January 31 of the year immediately following.

(iii) A Retail Store shall pay and the City shall collect all Single-Use Bag Fees. The City shall provide the necessary forms for Retail Stores to file with the City, to demonstrate compliance with the provisions of the City Code. The City will have the right to inspect the Retail Store’s compliance with the Single-Use Bag Fee program.

(iv) The Single-Use Bag Fee funds shall be collected and administered under the supervision of the City Manager or her/his designee. Administration of the funds collected shall be used only for expenditure relating to the following:

(A) Administrative costs associated with developing and implementing the Single-Use Bag Fee;

(B) City activities to:

(1) Provide Reusable Bags to residents or visitors;

(2) Educate residents, businesses, and visitors about the impact of Single-Use Bags on the City of Norman’s health and well-being, on the City of Norman’s recycling and waste disposal services, and the cost and other impact tax-paying citizens to mitigate the effect of Single-Use bags on the City’s resources, including its drainage, transportation and storm water systems, as well as on wildlife and the environment;

(3) Fund programs and infrastructure that allow the City of Norman to reduce waste associated with Single-Use bags;

(4) Purchase and install equipment designed to minimize bag pollution, including recycling containers, and waste receptacles associated with Single-Use Bags;

(5) Fund community cleanup events and other activities that reduce trash associated with Single-Use Bags;

(6) Mitigate the effects of Single-Use Bags on the City's resources, including its drainage, transportation and storm water systems, as well as on wildlife and the environment;

(7) Maintain a public website that educates residents on the progress of waste reduction efforts associated with Single-Use Bags; and

(8) Fund the administration of the Single-Use Bag Fee program.

(v) No Single-Use Bag Fees collected in accordance with this Code shall be used only for general governmental purposes.

(vi) Single-Use Bag Fees collected in accordance with this Section shall be continually available for the uses and purposes set forth in Section 21-118(d)(iv) of this Section without regard to fiscal year limitation. No Single-Use Bag Fee funds shall be used for any purpose not authorized by this chapter.

(e) Exemptions. A Retail Store may provide a Single-Use Bag to a customer at no charge if the customer provides evidence that he or she is a participant in a federal or state Food Assistance Program, including WIC, SNAP, TANF, etc.

(f) Required Signage. Every Retail Store subject to the collection of the 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 of Norman's Single-Use Bag Fee. The City Utilities Department shall provide a sign format, and electronic or hard copies shall be made available to Retail Stores upon request.

(g) Audits and Violations.

(i) Each Retail Store shall maintain accurate and complete records of the Single-Use Bag Fees collected, the number of Single-Use Bags provided to customers, the form and recipients of any notice required pursuant to this chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Retail Store to keep and preserve all such documents and records, including any electronic information, for a period of three years from the end of the calendar year of such records.

(ii) If requested, each Retail Store shall make its records available for audit by the City Manager or her/his designee during regular business hours for the City to verify the accuracy and completeness of such records, including any electronic information, for a period of three years from the end of the calendar year of such records.

(iii) If any person or entity fails, neglects or refuses to collect the Single-Use Bag Fee, or underpays the Single-Use Bag Fee, the City Manager or her/his designee shall make an estimate of the fees due, based on available information, and shall add thereto any penalties, interest, and any additions as set forth in Section 21-501, or otherwise set forth in the City Code.

§ 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, except that the effective date provision shall not be severable from the operative provisions of the ordinance.

ADOPTED this _____ day
of _____, 2018.

NOT ADOPTED this _____ day
of _____, 2018.

(Mayor)

(Mayor)

ATTEST:

(City Clerk)

Attachment B

City/Option	Fee?	Ban?	Exceptions?	Exclusions	Revenue Split	Violations	Hardship Variance	Other
New York City	\$0.05 on paper & plastic	None	SNAP, WIC	<ul style="list-style-type: none"> • Mobile vendors • Liquor stores • Emergency food providers 	100%- retailers/ establishments	After 6 months, \$250 penalty for first offence, \$500 for all other offenses in an 18-month period		Handed out 400,000 reusable bags as part of this program; Program was suspended by Gov.
Austin, TX	None	All single-use carryout bags		<ul style="list-style-type: none"> • Dry cleaning bags • Door hanger bags • Newspaper bags • Packages of bags • Pet waste • Yard waste • Pharmacists or veterinarians (must be recyclable) • Take out food • Produce or bulk item bags • Meat bags • Bags used by nonprofits or hunger relief groups 	N/A	None listed	Director may grant a hardship variance	State Leg. tried to strike this down but failed
Boulder, CO-- Peer City	\$0.10 on all disposable bags	None	Participants in federal or state food assistance programs	<ul style="list-style-type: none"> • Vendors • Farmer's Markets • Businesses that receive less than 2% gross sales in food • Bulk produce bags • bags to wrap frozen food • bags for flowers or potted plants • bags to contain unwrapped foods or baked goods 	40%- Retail; 60%- City (explicit uses for generated funds outlined for both parties)	Max fine of \$500 for first or second offense, more severe penalty for third (and subsequent) conviction		Disposable bag use fell 68%
Aspen, CO	\$0.20 fee on paper	Ban on single-use plastic bags	Participants in a state food assistance program	<ul style="list-style-type: none"> • Produce bags • bags for frozen food • flowers • potted plants • baked good • newspaper • door-hanger • laundry • bags sold in multiple packages intended for garbage/waste 	25% up to \$1,000 for first 12 months *and* \$100 for all months after-Retailer/ establishment; 75% for first 12mo.- City, but all generated funds must be used as allowed by ordinance (no money to general fund)	\$50 for first offense, \$100 for second offense, third and subsequent offenses decided by municipal court		City was sued over whether or not this was a tax (would have required vote of people) and city won; All businesses are allowed to opt-in (not including grocers)
Cambridge, MA	\$0.10 min + Sales Tax on single-use bags	Ban on single-use plastic bags	None listed	Bazaars operated by non-profit or religious organizations	100%- City	Up to \$300 for each offense, each day counts as one offense	Up to two-years	Passed 8-1;

City/Option	Fee?	Ban?	Exceptions?	Exclusions	Revenue Split	Violations	Hardship Variance	Other
Chicago, IL	\$0.07 tax on all checkout bags (paper and plastic)	None	SNAP or similar government food assistance program	<ul style="list-style-type: none"> Bulk foods produce frozen foods flowers Bags preventing cross-contamination unwrapped baked goods newspaper dry cleaning pharmacist, garbage bags pet waste yard waste take out food bags customers bring in plastic liners bags that cost more than \$0.50 	\$0.02 per bag sold- store/retail establishment; \$0.05- city	Loss of remittance for business (the business doesn't get to keep its \$0.02)		Original Ban did <i>not work</i> ; this was their second option. The ban was poorly constructed, which lead to retailers providing thicker bags to customers for free. to get around the ban-- they were worse for the environment. The new plan has driven down consumption of single-use bags 42%.
Dallas, TX	\$0.05 on all single-use carryout bags	None	None listed	<ul style="list-style-type: none"> Laundry Dry cleaning or garment bags biodegradable door-hanger or newspaper bags trash yard and pet waste bags produce, meat, nut, grains, and product bags inside carryout bags recyclable paper bags from pharmacies and recyclable paper take home bags from restaurants unless a plastic bag or film is used prevent moisture damage from soups, sauces and liquids. 	10%- Establishment, 90%- City	Up to \$500 fine for each offence; each day counts as an offense		City Council voted to repeal ordinance on June 3, 2015 (voted down 9-6)
Tacoma, WA	\$0.05 min on paper	Single-use plastic carryout bags	TANF, SNAP, WIC, and State food assistance program		100%- City	Only says that the city attorney may seek legal, injucive, or other equitable relief to enforce this chapter	One year	In period before law came into effect, many city departments gave away free bags; passed 8-1; budgeted for a \$50,000 revenue from this program for the city

City/Option	Fee?	Ban?	Exceptions?	Exclusions	Revenue Split	Violations	Hardship Variance	Other
Seattle, WA	\$0.05 min on paper	Single-use plastic carryout bags; Non-compostable/ biodegradable produce bags	Customers using state or federal food assistance program vouchers or benefit cards	<ul style="list-style-type: none"> Produce meat bulk Newspaper dry cleaning door hanger takeout food, paper lunch bags 	100%- City	Max \$500 fine	Nothing found	
Santa Fe, NM	\$0.10 fee on paper (fee was taken out by City Attorney recommendation)	Single-use plastic carryout bags	SNAP, TANF, TEFAP, WIC	Doesn't specifically mention any, but does refer to only single-use carryout bags	10%- Establishment, 90%- City (City fund dedicated to environmental education programs, services provided to the public, and towards the purchase of free reusable bags to provide residents)	None specifically listed	None	As mentioned, the city purchases bags for citizens with specific targetting to low-income residents; fee was taken out at City Attorney's recommendation; Stores now decide whether to charge a fee
Eugene, OR	\$0.05 fee on paper (must be 100% recyclable)	Single-use plastic bags	WIC, no others mentioned	<ul style="list-style-type: none"> Take-out bulk/produce frozen food flowers unwrapped baked goods pharmacist laundry/dry-cleaning product bags 	100%- City	None specifically listed	One year	
Corvallis, OR	\$0.05 fee on paper (must be 100% recyclable)	Single-use plastic carryout bags	WIC, no others mentioned	Plastic bags provided by a retail establishment at a time other than the time of checkout; pharmacy bags	100%- City/Not specified	Minimum fine for each separate offense \$200	None	Retail establishments are given the option to provide 100% recyclable, 40% post-consumer paper bags OR reusable bags to WIC utilizing citizens (must be given for free)
Washington, D.C.	\$0.05 for each disposable carryout bag	None	None listed	<ul style="list-style-type: none"> Bulk foods, produce frozen foods Flowers unwrapped baked goods/ prepared foods pharmacists newspaper door hanger laundry garbage/ waste bags bags provided for the purpose of transporting a partially consumed bottle of wine 	\$0.01 for all retail establishments; an additional \$0.01 for retail establishments that provide a credit of no less than \$0.05 to consumers for bringing in their own reusable bags; \$0.03-\$0.04 to the City	First (warning), second (fine of \$100), third (fine of \$200), fourth and subsequent (fine of \$500), no more than one fine per 7 day period		Money generated for city was to establish a river clean-up fund; some of the money goes to a fund that provides reusable bags to residents, with priority going to seniors and residents in need

Attachment C

Single-Use Fee Revenues

The following preliminary figures are calculated based on a rough approximation of the number of single-use plastic bags that five retail and grocery stores consume in a month. These stores are five of the largest, but not *the* five largest in Norman. Ideally, the fee would *discourage* use, which would drive down these numbers considerably, especially over a year.

Revenue Approximation

Fee	Revenue (per month)	Revenue (per year)
\$0.01	\$9,660.00	\$115,920.00
\$0.02	\$19,320.00	\$231,840.00
\$0.03	\$28,980.00	\$347,760.00
so.04	\$38,640.00	\$463,680.00
so.05	\$48,300.00	\$579,600.00
\$0.06	\$57,960.00	\$695,520.00
\$0.07	\$67,620.00	\$811,440.00
\$0.08	\$77,280.00	\$927,360.00
\$0.09	\$86,940.00	\$1,043,280.00
so.10	\$96,600.00	\$1,159,200.00
\$0.20	\$193,200.00	\$2,318,400.00

As an example, Boulder, CO (pop. 108,090) brought in \$136,753 in the six months following the fee's (\$0.10-- \$0.04 to retailer, \$0.06 to city) enactment while their bag use fell 68%.

ITEM 2

SHIPPING CONTAINERS



office memorandum

TO: Oversight Committee
FROM: Jane Hudson, Planning and Community Development
DATE: December 13, 2018
RE: Shipping/Cargo Containers in Residential Zoning Districts

BACKGROUND:

It has been requested that staff evaluate potential zoning restrictions for use of shipping/cargo containers (“shipping containers”) in residential districts within the City of Norman.

DISCUSSION:

Shipping containers are reusable transport and storage units of steel construction made to be loaded on trucks, trains or ships for moving products and materials. A shipping container can also take the form of the body of a transport trailer or a straight truck and any pre-fabricated portable metal storage unit utilized for the transport of goods or materials. With respect to the portability, strength, security and affordability of shipping containers, they have gained popularity in recent years. In particular, the use of shipping containers for permanent and temporary storage in the residential and agricultural areas of the City of Norman has increased in recent years, due in part to availability and cost based on the integrity of the structure.

In a few cases, neighbors have expressed concern over the impact of such containers on compatibility, aesthetics and potential effect on property values in their neighborhoods. Shipping containers are designed for industrial and commercial operations; shipping containers are rectangular steel boxes resembling industrial structures. Therefore, shipping containers are typically not visually integrated with buildings in a residential neighborhood and they are not considered aesthetically compatible with the existing residential character. It should also be noted that, under the current zoning ordinance, the use of shipping containers is not prohibited for either residential or commercial uses, assuming all building and fire code requirements are met; i.e. housing and commerce/office uses. The City of Norman consists of several types of zoning districts: agricultural, residential, commercial/office and industrial. Per its direction, staff is not evaluating restriction of shipping containers in the agricultural, commercial/office or industrial zoning districts. However, please note that in the commercial/office and portions of the industrial zoning districts there is an existing requirement for masonry façade on 80% of the exterior walls – this keeps the exterior of the structures aesthetically compatible with surrounding uses.

Additionally, this discussion should not be confused with the existing ordinance: Section 435.1 – Portable Storage Containers and Roll-off Trash Containers, used to permit a temporary POD or Roll-Off for those individuals remodeling/altering existing buildings of either residential or commercial uses and have an open permit for the construction or use of the POD/Roll-off container. To the extent the Zoning Ordinance is amended to address restrictions for use of shipping containers, amendments to Section 435.1 may be necessary in order to clarify the distinction between the two regulations: PODS versus Shipping Containers.

PROPOSED SHIPPING CONTAINER DEFINITION:

The definition of a “shipping container” is PROPOSED as follows:

- **Shipping Container:** Shall mean a freight container that has been or was made to be used for storing or housing goods and materials for the purposes of transport, and which are ultimately loaded on or affixed to means of transport, such as trucks, trains or ships. A shipping container shall also include but not be limited to the body of a transport trailer or a straight truck and any prefabricated portable metal storage unit used for the transporting of goods. For the purposes of this definition, a shipping container does not have wheels or include a motor vehicle or a transport trailer.

REGULATORY OPTIONS FOR COMMITTEE CONSIDERATION:

- **Do nothing to regulate and allow status quo.**
Staff has not received a large number of complaints over the years regarding shipping containers in the residentially zoned districts. Maintaining status quo would mean any issues would be addressed as the code currently allows.
- **Ban the use of shipping containers in residentially zoned districts.**
If directed staff could move forward with an amendment to the Zoning Ordinance to specifically prohibit the use of shipping containers (as accessory structures used for purposes other than living space) in the residentially zoned districts.
- **Adequately zone to allow use of shipping containers in residential districts, with additional restrictions.**
If directed staff could write zoning to allow placement of shipping containers in the residentially zoned districts with additional restrictions; i.e. exterior modifications must be made to the unit - siding installed to physically alter/change the exterior appearance of the shipping container. (This does not equate to only painting the structure – the exterior walls must be altered such that the corrugated wall is aesthetically compatible to the residential district.)

If the Committee decides to move forward with this option additional code amendments are necessary to allow enforcement of adopted requirements. Many times staff issues a permit and the property owner/permit holder will never finalize the permit, receive Certificate of Occupancy or Certificate of Completion, leaving an “open permit”. If this proposal is decided upon additional code amendments should be considered to impose fines, forcing the property owner to complete the exterior material changes to the shipping container.

Staff included several ordinances from other municipalities as examples for your review.

Staff is available for questions and further discussion at the December 13th meeting.

Exhibits – Mason – Shipping Containers
Midwest City – Shipping Containers
Tioga – Shipping Containers

ORDINANCE NO. 11-318

AN ORDINANCE OF THE CITY OF MASON, TEXAS, TO AMEND THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF MASON, TEXAS, AS HEREOF AMENDED, BY ADDING A NEW SECTION 6.225, PROHIBITED ACCESSORY USES IN RESIDENTIAL DISTRICTS, BY ADDING A NEW SUBSECTION 6.230 (B) ADDITIONAL ACCESSORY USES IN NON-RESIDENTIAL DISTRICTS, BY ADDING A NEW SECTION 6.235 PROHIBITED ACCESSORY USES IN NON-RESIDENTIAL DISTRICTS, BY ADDING A NEW SECTION 6.245 PROHIBITED ACCESSORY USES IN PUBLIC FACILITIES AND OPEN SPACE, AND BY ADDING A DEFINITION OF SEA CONTAINERS TO SECTION 7, DEFINITIONS; CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Mason Planning and Zoning Commission and the governing body of the City of Mason, in compliance with the laws of the State of Texas and the ordinances of the City of Mason, have given requisite notice of publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and in the exercise of its legislative discretion have concluded that the Comprehensive Zoning Ordinance should be amended by adding the following new sections and definition;

6.225 Prohibited Accessory Uses in Residential Districts

The following accessory uses are prohibited in all Residential Districts

- A. Metal shipping containers also known as "Sea Containers" are prohibited to be located within a Residential Zoning District

6.230 Additional Accessory Uses in Non-Residential Districts

- B. Metal shipping containers also known as "Sea Containers" are allowed in the C-2, M-1, & M-2 Districts with the following conditions:

1. They shall not be allowed to occupy required parking spaces
2. They shall not be located in front of the primary building
3. Shall be screened from view from a public street by either:
 - a. Minimum six (6) foot tall solid fence
 - b. Minimum six (6) foot tall evergreen landscaping
 - c. By other means deemed appropriate by the Building Official

4. They shall be painted in an “earth tone” color as approved by the building official

6.235 Prohibited Accessory Uses in Certain Non-Residential Districts

The following accessory uses are prohibited in the C-1 District

- A. Metal shipping containers also known as “Sea Containers” are prohibited within the C-1 District

6.245 Prohibited Accessory Uses in Public Facilities or Open Space Districts

The following accessory uses are prohibited in Public Facilities or Open Space Districts

- A. Metal shipping containers also known as “Sea Containers” are prohibited within a Public Facilities or Open Space Districts

Section 7 Definitions

Sea Container – A metal standardized re-sealable transportation box for unitized freight handling with standardized equipment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MASON, TEXAS:

SECTION 1.

The Comprehensive Zoning Ordinance of the City of Mason, Texas, duly passed by the governing body of the City of Mason, as amended from time to time, be the same is hereby amended by adding new Sections 6.225 Prohibited Accessory Uses in Residential Districts, 6.230 (b) Additional Accessory Uses in Non-Residential Districts, 6.235 Prohibited Accessory Uses in Certain Non-Residential Districts, 6.245 Prohibited Accessory Uses in Public Facilities or Open Space Districts, and a new definition of “Sea Container”

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Mason, Texas, as amended, except where the provisions are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Commission that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of

any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clause, sentences, paragraphs and section of this ordinance, since the same would have been enacted by the City Commission without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

Any person, firm, corporation who violates, disobeys, omits, neglects, refuses or fails to comply with, or who resists the enforcement of any provision of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense

SECTION 5.

All rights and remedies of the City of Mason are expressly saved as to any and all violations of the provisions of the Mason Municipal Code, or any other ordinances affecting zoning which have accrued at the time of the effective date of this ordinance; and, as such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the court.

SECTION 6.

This ordinance shall be in full force from and after its passage and publication as provided by law, and it is so ordained.

DULY PASSED AND APPROVED by the City Commission of the City of Mason, on this the 22nd day of August, 2011.

Brent Hinckley, Mayor

ATTEST:

Pattie Grote, City Secretary

5.7. - Accessory Uses and Structures

5.7.7. Accessory Structures in Residential Zoning Districts.

- (A) Tract, parcel, or lot with a gross area of one-half acre or less.
 - (1) Accessory structures when located, constructed or otherwise erected on a tract, parcel, or lot with a gross area of one-half acre or less, shall:
 - a. Not exceed seven hundred fifty (750) square feet in size.
 - b. Not exceed the height or size of the main structure on the tract, parcel or lot.
 - c. Be limited to total of seven hundred fifty (750) square feet of storage buildings per lot.
 - (2) Barns in the A-1, Agricultural District shall be exempt from the size requirements.
 - (3) The accessory structures shall not be within five (5) feet from the side property line.
 - a. At no time, except as provided in 5.7.7.(E) Small accessory structures on easements (below), shall any portion of the accessory structure be located upon a dedicated easement.
- (B) Tract, parcel, or lot with a gross area over one-half acre and less than one (1) acre.
 - (1) Accessory structures located, constructed or otherwise erected on a tract, parcel or lot with a gross area over one-half acre and less than one (1) acre shall:
 - a. Not exceed one thousand five hundred (1,500) square feet.
 - b. Not exceed the height or size of the main structure on the tract, parcel or lot.
 - c. Be limited to total of one thousand five hundred (1,500) square feet of storage buildings per lot.
 - (2) Barns in the A-1, Agricultural District shall be exempt from the size requirements.
 - (3) All accessory structures over fifteen (15) feet in height shall be located at least ten (10) feet from the side property line and fifteen (15) feet from the rear property line.
 - a. At no time, except as provided in 5.7.7.(E) Small accessory structures on easements below, shall any portion of the accessory structure be located upon a dedicated easement.
- (C) Tract, parcel, or lot with a gross area one (1) acre or greater.
 - (1) Accessory structures located, constructed or otherwise erected on a tract, parcel or lot with a gross area over one (1) acre shall:
 - a. Not exceed twenty (20) percent coverage of the rear yard.
 - b. Be limited to a total twenty (20) percent coverage of the rear yard of storage buildings per lot.
 - (2) Barns in the A-1, Agricultural District shall be exempt from the size requirements.
 - (3) All accessory structures over fifteen (15) feet in height shall be located at least ten (10) feet from the side property line and fifteen (15) feet from the rear property line.
 - a. At no time, except as provided in 5.7.7.(E) Small accessory structures on easements below, shall any portion of the accessory structure be located upon a dedicated easement.
- (D) Building Coverage. Main and accessory buildings shall not exceed the allowable coverage percentage of the zoning district in which they are located.
- (E) Small accessory structures on easements.

- (1) Only accessory structures under one hundred (100) square feet in area, under fifteen (15) feet in height, and constructed on skids may be located upon a dedicated easement.
 - (2) Owners or occupants of the land upon which the accessory structure is located shall be responsible for relocating the portable or temporary building in the event the city or any franchised public utility needs access to the easement.
 - (3) Unless an emergency exists, the property owner shall have seventy-two (72) hours to relocate the building after notice by the city or franchised public utility.
 - (4) If the property owner cannot or refuses to relocate the building, or in the event of an emergency, the city or franchised public utility may have the building relocated at the owner's expense.
 - (5) The city or franchised public utility shall not be responsible for any damages to said building or property due to the required relocation.
- (F) Location of accessory structures within rear yards. Accessory structures shall be located in the rear yard of the residential lot.

5.7.8. Steel Shipping Containers/Personal Storage Units.

- (A) Prohibited in single-family and two-family residential zoning districts. Steel shipping containers shall not be used for storage in the single-family and two-family residential zoning districts. Such steel shipping containers, as defined below, may be used for storage in the office, commercial, industrial and multifamily zoning districts unless prohibited by a planned unit development or other special zoning requirement.
- (B) Steel shipping containers. Steel shipping containers consist primarily of a steel exterior, are manufactured to transport goods, and have external measurements of twenty (20) or forty (40) feet in length by eight (8) feet six (6) inches in height by eight (8) feet in width.
 - (1) Illustrative example of steel shipping containers.

Shipping Containers



- (C) Personal storage units.

- (1) Personal storage units defined. For the purpose of this section, personal storage unit shall mean any container designed for the temporary storage of property. Such temporary storage units are typically rented to occupants of property for their storage use, and are typically delivered and removed by truck and/or trailer.
- (2) Permit required (residential).
 - a. When a personal storage unit is placed on residential property for a time period not to exceed seven (7) days, no permit is required. The personal storage unit may be located in front of the required setback.
 - b. When a personal storage unit is placed on residential property for a time period of greater than seven (7) days and a building permit for construction, remodel and/or repair of the main structure is in effect, the personal storage unit may remain as long as the building permit is in effect for the property. The personal storage unit may not be delivered until the building permit is issued. The personal storage unit must be removed when the work for which the building permit was issued is complete or when the building permit becomes no longer valid, whichever first occurs.
 - c. No more than one (1) personal storage unit per dwelling unit shall be permitted to be placed on a single-family or two-family residential property.
 - d. Stacking of personal storage units is not permitted.
 - e. Personal storage units shall not be placed on right-of-way or in any manner that creates a traffic visibility obstruction.
 - f. Personal storage units shall be placed on asphalt or concrete surfaces only.
- (3) Permit required (commercial, multifamily, office and industrial).
 - a. When a personal storage unit is placed on commercial, multifamily, office or industrial property for outdoor storage and there is no building permit in effect for construction, remodel and/or repair of a structure on the property, the following requirements must be complied with:
 1. A permit must be obtained, the application for which must include a site plan indicating the placement of such personal storage unit and the distances from the existing building(s) and property lines.
 2. The personal storage unit must be placed at least fifteen (15) feet away from any fire hydrant, shall not block any fire lane and shall not block any means of egress of any building.
 3. The personal storage unit shall not occupy any required parking space and shall not block any driving lane which would interfere with the flow of traffic.
 4. A personal storage unit shall not be placed in front of a building. If the personal storage unit can be seen from the abutting right-of-way, the personal storage unit must be screened with a sight-proof fence a minimum of six (6) feet in height.
 5. The personal storage unit shall be located only upon an improved surface of asphalt or concrete.
 6. No personal storage unit shall be placed on/over any dedicated drainage and/or utility easement.
 7. A permit fee of fifty dollars (\$50.00) for each personal storage unit must be submitted with the permit application.
 - b. When a personal storage unit is placed upon commercial, multifamily, office or industrial property for which a building permit has been granted and the proposed work is ongoing, the personal storage unit must be placed in accordance with the setbacks of the zoning district in which it is located. The personal storage unit shall be

located only upon an improved surface of asphalt or concrete, shall not occupy any required parking space and must be placed at least fifteen (15) feet away from any fire hydrant. A permit for the personal storage unit is required; however, no fee is required. The personal storage unit must be removed when the approved work is completed.

- (4) Penalties. When it is determined that any of the requirements contained in this section are not being met, the personal storage unit must be removed from the location within ten (10) days of receiving written notice from the city. If the personal storage unit is not removed as directed by the city, citations may be issued to the property owner, tenant and/or applicant as listed on the building permit.

(Ord. No. 3131, § 2, 10-26-10; Ord. No. [3192](#), § 1, 2-26-13; Ord. No. 3201, § 1, 7-9-13)

ORDINANCE NO. 295

AN ORDINANCE OF THE CITY OF TIOGA, GRAYSON COUNTY, TEXAS, ESTABLISHING REGULATIONS FOR THE USE OF CARGO OR SHIPPING CONTAINERS WITHIN THE CITY LIMITS OF THE CITY OF TIOGA; REQUIRING A PERMIT FOR THE PLACEMENT OF SUCH CONTAINERS; PROVIDING STANDARDS FOR USE AND DEVELOPMENT OF STORAGE CONTAINERS; PROVIDING A FINE FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Cargo or Shipping Containers are becoming more common additions to cities and towns as homeowners and businesses acquire those containers as accessory buildings; and

WHEREAS, cargo or shipping containers have a useful and valid purpose when properly used and situated; and

WHEREAS, the improper use and location of cargo or shipping containers can be unsightly, dangerous and inappropriate so as to affect property values and the overall health, safety and welfare of the City of Tioga; and

WHEREAS, the City of Tioga desires to regulate and accommodate the proper use of cargo or shipping containers in order to protect the health, safety and welfare of the City of Tioga;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIOGA, TEXAS:

SECTION ONE. DEFINITIONS

- a) Shipping or Cargo or Storage Container: means, generally, an all steel container with strength to withstand shipment, storage and handling. Such containers include reusable steel boxes, freight containers and bulk shipping containers; originally a standardized reusable vessel that was designed for and used in the parking, shipping, movement, transportation or storage of freight, articles or goods or commodities; generally capable of being mounted or moved on a rail car, truck trailer or loaded on a ship.
- b) Active building permit: means an unexpired and unrevoked building permit for which the Building Inspector has not performed a final inspection.
- c) Applicant: means an owner, occupant or authorized agent, or a contractor or person with control of a property or lot.
- d) City: means City of Tioga, Texas.

SECTION TWO.

TEMPORARY CARGO CONTAINER USE

- a) No person shall store, maintain or otherwise keep a cargo or shipping container temporarily on any lot or parcel of property within the City of Tioga without first having obtained and possessing an active building permit issued by the City of Tioga, and a permit for placement of a cargo/shipping container.
 - 1) Permits are valid for a period not to exceed six months.
 - 2) Upon review of a request for an extension; the City may grant one (1) six month extension.
- b) Cargo/Shipping Containers must abide by building codes except that: (1) a foundation is not required since they are temporary structures; (2) ventilation is not required; (3) electricity is an option but not required; (4) tie-downs are not required unless electricity is installed; (5) Setbacks are to be at least 15 feet from any other structure including other cargo/shipping containers.
- c) Cargo/Shipping Containers may be installed only in the Light Commercial, and General Commercial Zoning Districts, and in Residential Districts only with the following restrictions:
 - 1) Cargo/Shipping Containers cannot be installed on any Residential site with less than 1.0 acre (or 43560 sq.ft.)
 - 2) Only one Cargo/Shipping Container per 1 acre of land.
 - 3) No Cargo/Shipping Containers can be stacked on top of one another or on top of any other object.
 - 4) Cargo/Shipping Containers must be behind or beside the main or primary structure on the lot or parcel of land and are subject to the same setback requirements as the main structure.
 - 5) Cargo/Shipping Containers must have opaque screening such as fencing or vegetation screening of equal height to the Container to screen the container from the street right of way or adjacent properties.
 - 6) No Cargo container shall be used for human habitation or commercial business purposes.
 - 7) No Cargo Container shall be used to store hazardous materials.
 - 8) No Cargo Container shall be used to store and keep refuse or debris in, against, on or under the cargo container.
 - 9) Any Cargo Container shall be secure, structurally sound, stable and in good repair.

SECTION FOUR.

GENERAL TERMS OF USE FOR TEMPORARY USE

- a) Any permit issued under this Ordinance may be revoked upon ten (10) days written notice to the owner, occupant or person in control of the

- property if such person is storing, maintaining, or otherwise keeping a cargo container in violation of this ordinance.
- b) Any person aggrieved by a decision of the City to revoke a permit may appeal to the City Council, whose decision shall be final.

SECTION FIVE. **REPEALER**

All provisions of ordinances of the City of Tioga in conflict with the provisions of this ordinance are and by the terms of this ordinance shall be deemed amended and repealed and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION SIX. **SEVERABILITY**

If any article, paragraph, subdivision clause or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of the Ordinance as a whole or any part or provision thereof, other than the part so deemed to be invalid or unconstitutional.

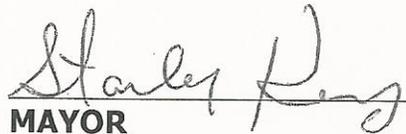
SECTION SEVEN. **VIOLATIONS AND PENALTIES**

Any person, firm or corporation violating any of the provisions of this ordinance of the City of Tioga, Texas, or amendments thereto, shall be guilty of a misdemeanor and, upon conviction in the municipal court of the City of Tioga, Texas, shall be subject to a fine not to exceed the sum of Five Hundred (\$500.00) dollars for each offense, and each and every day such offense shall continue shall be deemed a separate offense.

SECTION EIGHT. **EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after the publication of its caption as provided by law.

PASSED AND APPROVED by the City Council of the City of Tioga, Texas on the 10th day of October, 2011.


MAYOR

ATTEST: 
CITY SECRETARY