

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLINGHAM REGULATING RETAIL ESTABLISHMENTS' PROVISION OF SINGLE-USE CARRYOUT BAGS

WHEREAS, the City of Bellingham (the "City") has a duty to protect the health, safety and welfare of its citizens; and

WHEREAS, the City continues to be a leader in sustainability as demonstrated by our Comprehensive Plan; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(8)(a) established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(4) found that it is "necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility"; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(6)(c) found that it is the responsibility of city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies"; and

WHEREAS, it is the City's desire to conserve resources, reduce greenhouse gas emissions (GHG), waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increase the quality of life for the City's residents; and

WHEREAS, there is a need to conserve energy and natural resources, and effective litter control and reduction of single-use carryout bags will serve to accomplish such conservation; and

WHEREAS, even though single-use paper bags are made from renewable resources and are much less environmentally problematic in regards to litter than single-use plastic bags, they do require significant environmental resources to manufacture, transport, recycle and/or dispose of; and

WHEREAS, plastic bags are made of nonrenewable resources and plastic never biodegrades, it photo-degrades and can take hundreds of years for plastic bags to breakdown and when they do it is in tiny toxic bits which seep into the soil, waterways, lakes and bay; and

WHEREAS, numerous studies, including the Master Environmental Assessment on Single-use and Reusable Bags (MEA), document the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling beaches; and

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WHEREAS, The International Coastal Clean Up Report documents that plastic bags are a significant source of marine debris and are hazardous to marine animals and birds, which often confuse single-use plastic carryout bags for a source of food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, the City's taxpayers must bear the brunt of the clean-up costs; and

WHEREAS, according to the 2009 population of Bellingham compared to the 2009 U.S. total plastic bag use of 87.5 billion plastic carryout bags based on statistics in the MEA, the City residents use approximately 22 million plastic carryout bags each year; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic carryout bags that have an average use time of only 12 minutes is a major shift to reusable bags as reported by CNN in Fighting the Tide of Plastic Bags in a World Awash with Waste; and

WHEREAS, an ordinance reducing single-use bag distribution would shift consumer use to reusable bags, and help create local green jobs and in addition single-use plastic bags are often just a small part of the product line for the manufacturers in opposition to these ordinances according to Californians Against Waste (CAW); and

WHEREAS, studies document that regulating plastic bags and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags, according to the MEA; and

WHEREAS, the City has determined that a minimum cost pass-through of \$0.05 per recycled paper bag would cover the reasonable cost to a store of providing the paper bags to its customers, in addition to the savings of not purchasing single-use plastic bags; and

WHEREAS, other jurisdictions, according to Seattle's Alternative to Disposable Shopping Bags and Food Service Items report, have imposed paper bag fees and these fees have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and significantly reducing single-use bag consumption; and

WHEREAS, the proceeds from the collection of the paper bag pass-through would be retained by the retailer and this ordinance does not specify how the retailers must expend the monies collected; and

WHEREAS, customers have a choice to refuse a bag for a few items or choose to use a reusable bag to avoid this cost pass-through; and

WHEREAS, no portion of the cost pass-through will be provided to the City, and consequently, the City will not receive any revenues from the retailers' collection of the recycled paper bag pass-through; and

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WHEREAS, to promote a shift towards the use of reusable bags by City of Bellingham consumers, a paper bag cost pass-through is an essential element of this Ordinance as it is intended to provide an incentive to customers to bring their own bag instead of purchasing paper bags when shopping at regulated stores; and

WHEREAS, there are several alternatives to single-use carryout bags readily available in the City, including reusable bags produced locally from sustainable materials; and

WHEREAS, the intent of the City is to reduce the negative impacts noted above through the implementation of this Ordinance.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

SECTION 1. Chapter 5.47 is hereby added to the Bellingham Municipal Code as follows:

CHAPTER 5.47 SINGLE-USE CARRYOUT BAG ORDINANCE

Section 5.47.010 Definitions

(a) "Carryout Bag" means any bag that is provided by a Retail Establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods or food, from the retail establishment. "Carryout Bag" does not include:

(1) Bags used by consumers 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, fish, whether packaged or not; (C) contain or wrap flowers, potted plants, or other items where dampness may be a problem; or (D) contain unwrapped prepared foods or bakery goods; (E) Pharmacy prescription bags; or,

(2) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

(b) "Food Provider" means any person or establishment in the City of Bellingham, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, Grocery Store, delicatessen, or catering truck or vehicle.

(c) "Grocery Store" means any Retail Establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes, without limitation, supermarkets, convenience stores, liquor stores and gasoline stations.

(d) "Paper Bag Cost Pass-Through" means the cost, which must be collected by retailers from their customers when providing a Recycled Paper Bag.

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(e) "Pharmacy" means any retail store, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed pharmacy located within a hospital.

(f) "Product Bag" means any bag provided to a customer for use within a Retail Establishment to assist in the collection or transport of products to the point-of-sale within the Retail Establishment.

(g) "Recycled Paper Bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) Except as provided in subdivision (2) of this subsection (g), the paper carryout bag contains an average of 40 percent postconsumer recycled materials.

(2) An eight-pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(3) The paper carryout bag is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City.

(4) The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard D6400, as published in Master Environmental Assessment on Single Use and Reusable Bags, March 2010.

(5) Printed on the paper carryout bag is the minimum percentage of postconsumer content.

(h) "Retail Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer; Retail Establishment includes, without limitation, any Grocery Store, department store, hardware store, Pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor.

(i) "Reusable Bag" means a bag made of cloth or other fabric with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

(1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;

(2) is machine washable;

(3) if made of plastic, is a minimum of at least 2.25 mils thick.

(j) "Single-Use Plastic Carryout Bag" means any bag that is less than 2.25 mils thick and is made from nonrenewable resources.

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Section 5.47.020 Regulations

(a) No Retail Establishment in the City shall provide a Single-Use Plastic Carryout Bag to a customer unless otherwise permitted pursuant to Section 5.47.040.

(b) Retail Establishments in the City shall provide to a customer at the point of sale a Reusable Bag or a Recycled Paper Bag unless otherwise permitted pursuant to Section 5.47.040.

(c) No person shall distribute a Single-Use Plastic Carryout Bag at any City Facility, City-managed concession, City sponsored event, or City permitted event unless otherwise permitted pursuant to Section 5.47.040.

(d) No person shall distribute a Single-Use Plastic Carryout Bag or any paper bag at the Bellingham Farmers Markets, except eight pound or smaller recycled paper bags that may be distributed free of charge.

Section 5.47.030 Recycled Paper Bags Cost Pass-Through

(a) Retail Establishments may provide a customer a Recycled Paper Bag upon request but shall charge the customer a reasonable Pass-Through cost but not less than 5 cents.

(b) Retail Establishments shall indicate on the customer transaction receipts the total amount of the Paper Bag Pass-through charge.

Section 5.47.040 Exemptions

(a) Notwithstanding the regulations contained in Section 5.47.020:

(1) Single-Use Plastic Carryout Bags may be distributed to customers by Food Providers for the purpose of safeguarding public health and safety during the transportation of hot prepared take-out foods and prepared liquids intended for consumption away from the Food Provider's premises.

(2) Retail Establishments may distribute Product Bags and may make Reusable Bags available to customers whether through sale or otherwise.

(b) Notwithstanding the requirements contained in Section 5.47.030:

A store shall provide a customer participating in Washington State's low-income food assistance program, with a reusable bag or a recycled paper bag at no cost at the point of sale including, but not limited to, Medicaid and Women, Infant and Children programs.

(c) The Mayor may exempt a Retail Establishment from the requirements of this Chapter for up to a one year period, upon a request by the Retail Establishment showing that the

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conditions of this Chapter would cause undue hardship. An "undue hardship" shall only be found in:

1. Circumstances or situations unique to the particular Retail Establishment such that there are no reasonable alternatives to Single-Use Plastic Carryout Bags or a Paper Bag Pass-through cannot be collected; or
2. Circumstances or situations unique to the Retail Establishment such that compliance with the requirements of this Chapter would deprive a person of a legally protected right.

(d) If a Retail Establishment requires an exemption beyond the initial exemption period, the Retail Establishment must re-apply prior to the end of the exemption period and must demonstrate continued undue hardship if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

(e) An exemption request shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption. The Mayor may require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

(f) The Mayor may approve the exemption request, in whole or in part, with or without conditions.

(g) Exemption decisions are effective immediately, are final and are not appealable.

(h) The City Council may by resolution establish a fee for exemption requests. The fee shall be sufficient to cover the costs of processing the exemption request.

5.47.050 Remedies

(a) The Mayor is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this Chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

(b) Any person violating this Section shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars.

(c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

(d) Administrative enforcement of this ordinance shall proceed pursuant to Bellingham Municipal Code with the fines to be graduated for repeat violations in amounts set forth by City Council resolution.

(e) Each violation of this Chapter shall be considered a separate offense.

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(f) The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this Chapter shall preclude any person from pursuing any other remedies provided by law.

(g) Notwithstanding any other provision of this Ordinance, commencing on the date the ordinance becomes effective, this Ordinance may be enforced through any remedy as provided for in this Section. This Ordinance shall be enforced one year from enactment.

SECTION 2. Any provision of the Bellingham Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. 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 this 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 the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Any provision of Washington State law thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to match the State law.

SECTION 5. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective 180 days after enactment.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

PASSED by the Council this _____ day of _____, 2011.

Council President

APPROVED by me this _____ day of _____, 2011.

City of Bellingham
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Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:

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