

**City of Mukilteo
ORDINANCE NO. 1294**

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO PROMOTING THE USE OF RECYCLABLE PAPER AND/OR REUSABLE CARRYOUT BAGS BY RETAIL STORES LOCATED IN THE CITY BY ADOPTING A NEW CHAPTER MMC 8.22 – SOLID WASTE AND PLASTIC BAG REDUCTION, ESTABLISHING PENALTIES FOR VIOLATIONS, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Mukilteo has a duty to protect the health, safety and welfare of its citizens, and the natural environment and the community's economy; and

WHEREAS, the Mukilteo City Council acknowledged the need to promote sustainability concepts when it established a City Council Subcommittee to research and recommend to the full City Council ways to make Mukilteo more sustainable; and

WHEREAS, in 2011 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, in 2011 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, in 2011 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 Council's desire to conserve resources, reduce greenhouse gas emissions (GHG), waste, litter and marine pollution and to protect the public health, safety and welfare – including wildlife and fisheries, all of which increase the quality of life for the City's residents; and

WHEREAS, the reduction of single-use carryout bags will serve to conserve energy and natural resources and also control litter; and

WHEREAS, single-use plastic carryout bags have significant environmental impacts in the aquatic environment, especially on marine mammals and aquatic birds in Puget Sound, such as the finding by scientists that the Pacific Ocean contains a huge accumulation of plastic debris (estimated at one million pieces of plastic per square mile) that entangles marine animals and only breaks down into smaller pieces, absorbing toxins with high toxic concentrations that are mistakenly ingested for food; and

WHEREAS, single-use plastic carryout bags have significant environmental impacts by creating upland trash; and

WHEREAS, single-use plastic carryout bags add to post-consumer solid waste, reduction in post-consumer waste will decrease the city's consumers' share of related negative impacts on Snohomish County, other parts of Washington; and

WHEREAS, plastic bags which are made of nonrenewable resources and plastic never biodegrade but only photo-degrade, which can take hundreds of years before plastic bags break down, and even when they do there are still tiny toxic bits which seep into the soil, streams, lakes and Puget Sound; and

WHEREAS, promoting the use of reusable bags at carryout in retail establishments will reduce the use of paper bags during 2012 and in combination with disallowing the use of plastic bags starting January 1, 2013 will promote more sustainable practices in the city; and

WHEREAS, single-use plastic carryout bags have been banned in cities and counties around the world, including the City of Edmonds and Bellingham, in some cases reducing the use of plastic one-use shopping bags by 90%; and

WHEREAS, the City Council deems it to be in the public interest to establish regulations related to banning plastic bag use for carryout retail, while still recognizing there are health related needs for separating meats and vegetables as well as take-out restaurant food that are excluded from this ban; and

WHEREAS, single-use plastic carryout bags represent an unnecessary use of petroleum byproducts that are a non-renewable resource while reusable bags and paper bags degrade more rapidly and are made from renewable resources, promoting a sustainable alternative to single-use plastic carryout bags; and

WHEREAS, the effort to promote the use of reusable shopping bags will be done in partnership with the Mukilteo Chamber of Commerce during 2012, to generate support and understanding before the prohibition on single-use plastic carryout bags starts January 1, 2013; and

WHEREAS, the Mukilteo City Council finds that a reduction in single-use plastic bags is in the best interest of public health, safety, and welfare, for the citizens of Mukilteo and the environment; 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, it is the intent of the City to reduce the negative impacts noted above through the implementation of this Ordinance on January 1, 2013;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. MMC 8.22 – Adopted. A new chapter, MMC 8.22 – Solid Waste and Plastic Bag Reduction shall be added to read as set forth as follows:

**Chapter 8.22
Solid Waste and Plastic Bag Reduction**

Sections:

8.22.010	Purpose
8.22.020	Definitions
8.22.030	Types of Checkout Bags Permitted at Retail Establishments
8.22.040	Operative Dates
8.22.050	Pass Through Bag Charge
8.22.060	Exemptions
8.22.070	Remedies and Penalties

8.22.010 Purpose. The purpose of this ordinance is to promote more sustainable practices in the city by encouraging the use of reusable bags for carryout items in retail establishments and encouraging reduced the use of paper bags starting in 2012, and to prohibit the use of single-use plastic carryout bags starting January 1, 2013.

8.22.020 Definitions. The following definitions shall apply:

“Checkout Bag” means a bag that is provided by a retail establishment at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment.

“Food Provider” means any person or establishment in the City of Mukilteo, 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.

“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.

“Pharmacy” means any retail establishment, 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.

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

“Recyclable Paper Bag” or “Recyclable Paper or other renewable product Carryout Bag” means a paper bag that meets all of the following requirements:

1. Contains no old growth fiber;
2. Is 100% recyclable overall and contains a minimum of 20% post-consumer recycled content; or is compostable in a green bin; and
3. Displays the word “Recyclable” or “Compostable” or “100% Post Industrial Recycled Resin” on the outside of the bag or is compostable 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.

“Non-profit Reuser” means a charitable organization, as defined in Section 501(c) (3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

“Retail Establishment” means any commercial business facility engaged in the sale of goods to consumers for ultimate consumption.

“Renewable Compostable” means made from a renewable material (e.g. corn byproduct) that is also compostable and breaks down or biodegradable and is allowed to be in a solidwaste/yardwaste green bin,

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either:

4. Made of cloth or other machine washable fabric; and/or
5. Made of durable plastic that is at least 2.25 mils thick and is suitable for reuse.

“Single-Use Plastic Carryout Bag” means any Carryout Bag made from plastic, excluding Reusable or Renewable product Bags.

8.22.030 Regulations - Types of Carryout Bags Permitted at Retail Establishments.

- A. All Retail Establishments within the City of Mukilteo shall provide only the following as Carryout Bags to customers:
 1. Reusable Bags
 2. Recyclable Paper Bags;
 3. 100% Post Industrial Recycled Resin Bags; or
 4. Bags made from renewable compostable materials.
- B. Nothing in this Chapter shall be read to preclude Retail Establishments from making Reusable Bags available for sale to customers.
- C. The City of Mukilteo and the Mukilteo Chamber of Commerce will work with retailers, retail associations, unions and other organizations to create educational elements about the benefits of reusable bags. This may include educational information and employee training and will take place before the operative date, and as needed after January 1, 2013. All retail establishments are strongly encouraged to educate their staff to promote reusable bags as the best option for carryout bags and to post signs encouraging customers to use reusable bags.

8.22.040 Operative Date(s).

All Retail Establishments shall comply with the requirements of this Ordinance by January 1, 2013 and are encouraged to implement as soon as possible before that date. The purpose of this greater than one-year implementation period is to:

- A. Allow time for affected retailers to prepare for and adapt to the provisions of this ordinance;
- B. Allow time for the promotional and educational program to take affect and encourage the use of reusable, paper or renewable material bags; and
- C. Enable the Mayor and City Council to work with members of the community and affected parties to evaluate modifications or alternatives needed to address issues regarding provisions or implementation of this ordinance.

8.22.050 Pass-through bag charge

- A. Retail Establishments may provide a customer a Recycled Paper Bag upon request but shall charge the customer a reasonable pass-through charge of not less than 5 cents per bag provided.
- B. Retail Establishments shall indicate on the customer transaction receipts the total amount of the pass-through charges.

8.22.060 Exemptions

The following are exempt from these regulations:

- A. Carryout Bags do not include:
 - 1. Bags provided solely for produce, bulk food or meat at a produce, bulk food or meat department within a grocery store, supermarket, produce or meat market, farmers market or other similar retail establishment.
 - 2. Bags provided to carry out food cooked or prepared at a restaurant or other similar food and beverage establishment.
 - 3. 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;
 - d. contain unwrapped prepared foods or bakery goods.
 - 4. Pharmacy prescription bags
 - 5. Small checkout bags no larger than 1 pint in volume for small items such as gifts or hardware.
- B. 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.
- C. Nonprofit charitable reusers who sell and promote the use of reusable bags, for clothing and food assistance programs.
- D. The Mayor, or his or her designee, may exempt a retail establishment from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. This request must be submitted in writing to the City within 30 days of the effective date of this Chapter. Documentation shall include factual support for the claimed exemption and the Mayor may require the provision of additional information. The phrase “undue hardship” may include, but is not limited to, the following:
 - 1. Unique situations for which there is no acceptable alternative to using a single-use plastic carryout bag such as protection of product or service or where the product is unique in size or shape.
 - 2. When compliance with the requirements of this Chapter would deprive a person of a legally-protected right.

8.22.070 Remedies or Penalties

- A. Upon the “comply by date” of January 1, 2013, the Mayor shall designate a department in the City as the department charged with enforcing the provisions of this Chapter. The

department head and his or her designees shall be the enforcement officers with authority and powers to issue civil infractions for violations of provisions of this Chapter.

- B. A violation of any provision of this Chapter shall constitute a Class III civil infraction pursuant to MMC 1.32.020, as authorized by Chapter 7.80 RCW. Issuance and disposition of infractions issued for violations of this chapter shall be in accordance with Chapter 7.80 RCW.

Section 2. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4 Conflict. In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 5. Effective Date. The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the Council and approved by the Mayor of the City of Mukilteo, this 12th day of December, 2011.

CITY OF MUKILTEO

Mayor Joe Marine

ATTEST/AUTHENTICATED:

Christina J. Boughman, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK: **12-12-11**
PASSED BY THE CITY COUNCIL: **12-12-11**
PUBLISHED: **12-16-11**
EFFECTIVE DATE: **12-21-11**
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