

MUKILTEO CITY COUNCIL AGENDA BILL 2011-74

SUBJECT TITLE: Re-usable Bags Ordinance Public Hearing		FOR AGENDA OF: December 12, 2011	
Contact Staff: Council Sustainable Subcommittee Members		EXHIBITS: 1. Ordinance 1294 (draft) 2. Issues the ordinance addresses 3. Plastic Bag FAQs 4. Summary of purpose of Ordinance 1294	
Department Approval: H. McCartney, FAICP, Planning & CD Dir. <i>M</i>			
City Administrator Approval: J. Hannah <i>M</i>			
Amount Budgeted:	\$ 10,000	Account Name(s): Sustainability Project under Community Support	Account Number: 011.19.557.200.4406
Amount/Expenditure:	\$ 0		
Budget Remaining:	\$ 10,000		
Appropriation Required:	0		

RECOMMENDATION:

Motion to approve Ordinance 1294 as presented to promote the use of recyclable bags in 2012 by retail stores located in the City of Mukilteo and to prohibit the use of single-use plastic carryout bags starting January 1, 2013.

SUMMARY:

The City Council Sustainability Subcommittee first met to discuss the use of reusable bags and limiting the use of plastic bags on October 13, 2010. On July 18, 2011 City Council authorized the Sustainability Subcommittee to draft an ordinance for City Council review. The majority of the proposed ordinance follows the City of Edmonds' ordinance which was adopted July 29, 2009 although elements of a City of Bellingham ordinance have also been incorporated into the proposed Ordinance 1294.

Encouraging the use of reusable bags, recycled or compostable checkout bags and limiting the use of plastic bags is a step towards achieving sustainability in the community and limiting solid waste that is harmful to the environment and to public health.

Ordinance 1294 has an educational outreach component and a regulatory component. The educational program would take place in 2012 in collaboration with the Mukilteo Chamber of Commerce. Regulations would go into effect Jan. 1, 2013.

PROPOSAL:

Ordinance 1294 would create a new section in MMC Title 8 – Health and Safety. The new section will provide definitions for relevant terms and limit the types of carryout bags retail establishments may provide to its customers. It has an operational date for when the proposed regulations go into effect of Jan. 1, 2013 to provide for a one-year public outreach program.

Educational Outreach Program

This program would primarily take place in 2012 to promote the benefits of using reusable bags but could be continued into 2013. It would be a joint effort between the City and the Mukilteo Chamber of Commerce. The Chamber is already working on creating and making available to the public a reusable bag that can be sold promoting tourism in Mukilteo and shopping locally.

Goals of the program, in addition to preparing retailers for the regulations, would be to inform the public why use of plastic bags is so undesirable and what the benefits are in using reusable bags. Prohibiting use of plastic bags will help conserve energy and natural resources while reducing the amount of litter generated. Retail establishments will be encouraged to educate their staff on the issues and to post signs encouraging their customers to use reusable bags.

Regulations

The regulatory portion of Ordinance 1294 would go into affect Jan. 1, 2013. For the most part, single use plastic bags would be prohibited. The only type of bags that retail establishments will be allowed to provide to its customers are:

- Reusable bags
- Recyclable paper bags
- 100% post industrial recycled resin bags; or
- Bags made from renewable compostable materials.

However, there are certain instances where single-use plastic bags are the most practical option so exemptions to the above are provided for in Ordinance 1294. Those exemptions are for bags:

- Used solely for produce, bulk food or meat;
- To carry out food cooked or prepared at a restaurant or similar establishment;
- Used by consumers inside stores to package bulk items such as fruit, vegetables, candy or small hardware items or for frozen items, or for flowers or potted plants or other items where dampness may be an issue or for unwrapped prepared foods or bakery items;
- For pharmacy prescriptions
- No larger than one (1) pint in volume used for small items;
- Used for newspapers or door-hangers;
- For laundry dry cleaning;
- Sold in packages of multiple bags for garbage, pet waste or yard waste;
- Used by nonprofit charitable reuses to sell and promote the use of reusable bags for clothing or food assistance programs.

There is also a provision for a general exemption for retail establishments if it can sufficiently be shown a hardship on the establishment is created by imposition of the regulations. The Mayor (or his/her designee) is given the authority to provide the exemption if the hardship claim is supported by factual documentation. This exemption is intended to be used when there is no acceptable substitute available for single-use plastic bags for the products sold by the establishment or if a person would be deprived of a legally protected right if forced to comply with the proposed regulations.

Violators of the regulations (who are not exempt) would be subject to a Class III civil infraction pursuant to MMC 1.32.020. The maximum penalty for a Class III civil infraction is \$50.00. Every day a violation is committed is considered to be a separate offense.

ALTERNATIVES:

1. Modify and approve Ordinance 1294.
2. Do not approve Ordinance 1294.

Exhibit 1

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 8.22 MMC – 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 and reduction in post-consumer waste will decrease the city's consumers' share of related negative impacts on Snohomish County and 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. Chapter 8.22 MMC – Adopted. A new chapter, 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 Carryout Bags Permitted at Retail Establishments
8.22.040	Operative Dates
8.22.050	Exemptions
8.22.060	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:

- A. "Carryout 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.
- B. "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.
- 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. "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.
- E. "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.
- F. "Recyclable Paper Bag" or "Recyclable Paper or other renewable product Carryout Bag" means a paper bag that meets all of the following requirements:
 - A. Contains no old growth fiber;
 - B. Is 100% recyclable overall and contains a minimum of 20% post-consumer recycled content, or is compostable in a green bin; and
 - C. 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.

- G. "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.
- H. "Retail Establishment" means any commercial business facility engaged in the sale of goods to consumers for ultimate consumption.
- I. "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,
- J. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either:
 - A. Made of cloth or other machine washable fabric; and/or
 - B. Made of durable plastic that is at least 2.25 mils thick and is suitable for reuse.
- K. "Single-Use Plastic Carryout Bag" means any Carryout Bag made from plastic, excluding Reusable or Renewable Compostable product Bags

8.22.030 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 Exemptions

The following are exempt from these regulations:

- A. 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.
- B. Bags provided to carry out food cooked or prepared at a restaurant or other similar food and beverage establishment.
- C. 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, fish, whether packaged or not;
 - 3. contain or wrap flowers, potted plants, or other items where dampness may be a problem;
 - 4. contain unwrapped prepared foods or bakery goods.
- D. Pharmacy prescription bags
- E. Small checkout bags no larger than 1 pint in volume for small items such as gifts or hardware.
- F. 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.
- G. Nonprofit charitable reusers who sell and promote the use of reusable bags, for clothing and food assistance programs.
- H. 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 bags 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.

8.22.060 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 thirty (30) 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:
PASSED BY THE CITY COUNCIL: December 12, 2011
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO: 1294

Exhibit 2: What Does Ordinance Address?

Issue	Contained in Ord.	Comment
Encourages Reusable Bags	✓	QFC & Safeway have programs already encouraging reusable bags
Encourages Compostable Bags	✓	This is new as it was not in the Edmonds Code and expands options to comply
Encourages Reduction in Use of Paper Bags	✓	Paper with handles cost more, but can be brought back for reuse and are compostable.
Plastic Bags can still be used for: <ul style="list-style-type: none"> • Dry cleaning • Takeout food • Meats • Produce & vegetables • Bulk food • Flowers or potted plants • Bakery goods • Unwrapped food • Pharmacy prescriptions • Small (1 pint) checkout bags • Pet waste • Newspapers • Door-hangers • Boxes of Garbage or food storage (sandwich) bags 	✓	Allowed at grocery, supermarkets, farmers market and similar retail establishment. Nonprofit Charitable reusers for clothing and food assistance programs.
Exemptions	✓	1. Unique situations with no acceptable alternative 2. Deprivation of legally-protected right
Penalties	✓	Class III civil infraction with a maximum penalty of \$50.00. Each day code is violated is an infraction.
Are any deposits required	No	

Exhibit 3: Plastic Bag FAQs

Will the ordinance ban all plastic bags? No. While we will encourage people to use fewer bags when possible, the reality is that some plastic bags will remain. Bags for meats, vegetables, and bulk foods are not banned. Neither are garbage bags, sandwich bags, and the like.

What about dog poop? As mentioned above, other plastic bags are still available (for vegetables, etc). Biodegradable bags are also available for purchase and have a much lower impact on the environment. By purchasing biodegradable bags, you would also be supporting a local business.

Aren't plastic bags convenient? There is no doubt that single-use plastic grocery bags are convenient; however, if promoting sustainability and environmental protection are a priority then this convenience is not worth the broad environmental impacts.

Isn't paper worse than plastic? The ordinance discourages the use of all types of single-use bags, because single-use bags consume more resources and produce more waste than reusable bags. However, plastic bags are the least desirable because they consume a nonrenewable resource (oil), degrade very slowly, and harm marine life. Recycling rates for paper bags are vastly higher than for plastic.

How many bags does a person typically use? It is estimated that every American household uses 520 bags per year (some estimates are as high as 1,000). Multiply that by the approximately 8,000 household in Mukilteo and you get over 4.2 million – 8.0 million bags.

What about recycling plastic bags? The average of recycling plastic bags nationally is below five percent. That means in Mukilteo alone we still have, at a minimum, nearly 4 million bags in our environment. Large grocery store chains have provided recycling containers for plastic bags since the early 1990s without a significant increase in recycling rates. Also, many of the bags collected at recycling plants are bundled and shipped to China, further increasing their carbon footprint.

How bad are plastic bags, really? The collective problem of plastics in the marine environment affects the world far beyond Mukilteo and Puget Sound. The North Pacific Gyre, an area in the ocean about 1,000 miles off the coast of California, harbors an enormous accumulation of plastic debris. Studies conducted by the Algalita Marine Research Foundation indicates that plastic does not completely degrade in the marine environment (unlike paper), and instead breaks down into small pieces. These small bits of plastic attract bacteria, pesticides, and other toxins that may be transferred to the marine animals as they mistakenly ingest them as food. This bioaccumulation of toxins travels up the food chain to reach dangerous levels.

But plastic bags are free, aren't they? The Wall Street Journal estimates the U.S. consumes 100 billion single-use plastic grocery bags every year, making it a \$4 billion a year industry. These costs are passed on to the consumer through higher food costs. This does not even count the additional costs for cleanup (your tax dollars), space in landfills (your money again), or the long-term environmental and human health impacts.

Exhibit 4: Summary of Ordinance's Purpose

Mayor Joe Marine and the City Council Sustainability Subcommittee would like to promote the use of reusable/recycled paper carryout bags by retail establishments located within the City of Mukilteo to reduce the use of plastic bags and the generation of solid waste.

In 2011 the Washington State Legislature established waste reduction as the first priority for the collection, handling, and management of solid waste (RCW 70.95.010(8)(a)). They found that it is necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste presently generated. City governments have the primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies through their solid waste contracts.

The City Council desires 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. One effort in this direction is reducing the use single-use carryout bags of plastic. It is estimated that every American household uses 520 bags per year and with our 8,547 households, residents could be generating 4.4 million bags. The reduction will serve to conserve energy, natural resources and also help to control litter.

Plastic bags are the least desirable single-use bag because they consume a nonrenewable resource – oil – and biodegrade very slowly. Recycling rates for paper bags are also vastly higher than plastic bags. This regulation would not apply to bags used for food ready to eat or for protecting meats and vegetables. It would not apply to sandwich bags or garbage bags and the like.

The Mayor and City Council would like to work cooperatively with the Mukilteo Chamber of Commerce and Mukilteo businesses to increase the use of reusable bags. During 2012 an education effort will focus on this before the ordinance takes affect on January 1, 2013 limiting the use of plastic bags. This will provide enough time to get the word out to businesses so they can switch to recycled paper or renewable material bags, and to also create awareness with residents that they are encouraged to bring reusable bags when shopping.

The joint campaign could also promote shopping locally. This could be a WIN-WIN for our local businesses, residents and our environment.

Why should government get involved? The post consumer effects of plastic bags have a direct impact on the environment and public health. As plastic breaks down, it is introduced into the food chain. These tiny plastic particles act as a magnet to PCBs and other toxins and are then ingested by fish, which then will be caught by commercial fishermen. Public health must be a priority for government.

What stores are affected? The City's ban on single-use plastic carryout bags affects all retail establishments, which means any commercial business facility engaged in the sale of goods to consumers for ultimate consumption.

Aren't regular plastic garbage bags just as bad? Because of their design and use, garbage bags are much less likely to end up as litter which is one of the major problems with the lightweight single-use carryout bags.

What is the solution? Reusable shopping bags are both the best economical and environmental solution. One reusable shopping bag will replace hundreds of single-use options. Reusable bags conserve resources while reducing litter, waste to landfills, and greenhouse gas emissions.

Will this make a difference? Obviously a Mukilteo ordinance is not going to stop the ever-increasing amount of plastics fouling our environment. However, cities and countries around the world are banning plastic bags and promoting the use of reusable bags. Bangladesh banned plastic bags in 2003 as did Coles Bay, Tasmania. In 2008, even China banned the use of the ultra-thin plastic bags (saving 37 million barrels of oil).