

ORDINANCE O-4477

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO
REGULATING THE PROVISION OF SINGLE-USE CARRYOUT BAGS BY
RETAIL ESTABLISHMENTS.

1 WHEREAS, the Washington State Legislature in RCW
2 70.95.010(8)(a) established waste reduction as the first priority for the
3 collection, handling, and management of solid waste; and
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5 WHEREAS, the Washington State Legislature in RCW
6 70.95.010(4) found that it is "necessary to change manufacturing and
7 purchasing practices and waste generation behaviors to reduce the
8 amount of waste that becomes a governmental responsibility"; and
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10 WHEREAS, the Washington State Legislature in RCW
11 70.95.010(6)(c) found that it is the responsibility of city and county
12 governments "to assume primary responsibility for solid waste
13 management and to develop and implement aggressive and effective
14 waste reduction and source separation strategies"; and
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16 WHEREAS, it is the City's desire to conserve and protect
17 resources, reduce waste, litter, marine litter and pollution and to protect
18 public health and welfare; and
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20 WHEREAS, having a shoreline abutting Lake Washington, the
21 Kirkland community is particularly aware of, and concerned by,
22 discarded plastic wastes along its beaches and shorelines and in the
23 general freshwater and marine environment; and
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25 WHEREAS, the post-consumer environmental effects of
26 disposable plastic carryout bags are detrimental to marine life, wildlife,
27 and public health; and
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29 WHEREAS, less reliance on disposable plastic carryout bags
30 provided by retail establishments works toward the goals of conserving
31 energy and natural resources, while reducing litter and pollution; and
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33 WHEREAS, disposable plastic carryout bags are made from
34 nonrenewable resources and photo-degrade into smaller and smaller
35 particles that become encapsulated into soils or carried into rivers and
36 lakes, Puget Sound and the world's oceans, posing threats to animal life
37 and the natural food chain; and
38

39 WHEREAS, paper carryout bags are made from renewable
40 resources and do not pose the same freshwater and marine litter
41 problems as disposable plastic carryout bags, but nevertheless require

significant resources to manufacture, transport, recycle and dispose of;
and

WHEREAS, costs associated with the use, recycling and disposal of disposable paper and plastic carryout bags in Kirkland creates burdens on the City's solid waste disposal system, including, in the case of disposable plastic carryout bags, machine down time at material recovery facilities and contamination in finished compost; and

WHEREAS, regulating plastic bags and placing a mandatory charge on paper bags will significantly reduce the use of both types of bags; and

WHEREAS, it is in the best interest of the health, safety and welfare of the people of the City of Kirkland that regulations require a pass-through charge on the use of recyclable paper carryout bags in order to encourage greater use of reusable bags, to reduce the cost of solid waste disposal by the City, and to protect the environment.

NOW, THEREFORE, The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code ("KMC") Section 1.12.020 is hereby amended to read as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(a) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

(b) "Act" means doing or performing something.

(c) "Applicable department director" means the director of the department or his or her designee.

(d) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 12 are specifically excluded from the application of this chapter.

(e) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use

89 of any land above, at or below ground or water level, and all acts
90 governed by a city regulation.
91
92 (f) "Emergency" means a situation which in the opinion of the
93 applicable department director requires immediate action to prevent or
94 eliminate an immediate threat to the health or safety of persons or
95 property.
96
97 (g) "Hearing examiner" means the Kirkland hearing examiner and the
98 office thereof established pursuant to Chapter 3.34.
99
100 (h) "Omission" means a failure to act.
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102 (i) "Person" means any individual, firm, association, partnership,
103 corporation or any entity, public or private.
104
105 (j) "Person responsible for the violation" means any person who is
106 required by the applicable regulation to comply therewith, or who
107 commits any act or omission which is a civil violation or causes or
108 permits a civil violation to occur or remain upon property in the city, and
109 includes but is not limited to owner(s), lessor(s), tenant(s), or other
110 person(s) entitled to control, use and/or occupy property where a civil
111 violation occurs. For violations of the city sign regulations, this definition
112 includes, but is not limited to, sign installers/posters, sign owners, and
113 any other persons who cause or participate in the placement of a sign
114 in a manner that constitutes a civil violation. For violations of city tree
115 regulations, this definition includes any person who caused or
116 participated in the removal of a tree in a manner that constitutes a civil
117 violation.
118
119 (k) "Regulation" means and includes the following, as they now exist
120 or are hereafter amended:
121
122 (1) Title 23 (Kirkland Zoning Code);
123
124 (2) Title 21, Buildings and Construction (including codes adopted by
125 reference);
126
127 (3) Chapter 15.52 (Surface Water Management);
128
129 (4) Title 29 (Land Surface Modification);
130
131 (5) Chapter 19.04 (Obstructing Streets or Sidewalks);
132
133 (6) Chapter 11.76 (Junk Vehicles);
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135 (7) Chapter 11.24 (Nuisances);

(8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;

(9) Chapter 7.74 (Fair Housing Regulations);

(10) Chapter 16.05 (Retail Carryout Bags, including definitions set forth in KMC Chapter 16.04).

~~(1011)~~ Chapter 16.08 (Garbage Disposal).

(l) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(m) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 2. A new Section 16.04.045 of the Kirkland Municipal Code ("KMC") is hereby adopted to read as follows:

16.04.045 Carryout bag.

"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 to a customer for the purpose of transporting food, goods or merchandise out of the establishment. Carryout bags do not include: (1) bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items, such as nails and bolts, or to contain or wrap frozen foods, meat or fish, whether prepackaged or not, or to contain or wrap flowers, or other items where dampness may be a problem; (2) bags to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs; (3) bags to safeguard public health and safety during the transportation of prepared take-out foods intended for consumption away from the retail establishment; or (4) 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.

Section 3. A new Section 16.04.085 of the KMC is hereby adopted to read as follows:

16.04.085 Disposable plastic carryout bag.

"Disposable plastic carryout bag" means any carryout bag made from plastic or bioplastic, including materials marketed or labeled

183 "biodegradable" or "compostable," that is not a reusable bag as defined
184 in this chapter.

185
186 Section 4. A new Section 16.04.126 of the KMC is hereby
187 adopted to read as follows:

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189 **16.04.126 Pass-through charge.**

190 "Pass-through charge" means a charge to be collected by retailers
191 from their customers when providing recyclable paper bags, and
192 retained by retailers to offset the cost of bags and other costs related
193 to the pass-through charge.

194
195 Section 5. A new Section 16.04.127 of the KMC is hereby
196 adopted to read as follows:

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198 **16.04.127 Recyclable paper bag**

199 "Recyclable paper bag" means a paper carryout bag that meets the
200 following requirements: (1) contains a minimum average of 40 percent
201 post-consumer recycled materials; (2) the paper carryout bag is
202 accepted for recycling in the City's recycling and composting program;
203 and (3) displays the minimum percent of post-consumer content on the
204 outside of the bag.

205
206 Section 6. A new Section 16.04.143 of the KMC is hereby
207 adopted to read as follows:

208
209 **16.04.143 Retail establishment.**

210 "Retail establishment" means any person, corporation, partnership,
211 business venture, public sports or entertainment facility, government
212 agency, street vendor or vendor at public events or festivals or
213 organization that sells or provides merchandise, goods or materials
214 including, without limitation, clothing, food, beverages, household
215 goods, or personal items of any kind directly to a customer. Examples
216 include but are not limited to department stores, clothing stores, jewelry
217 stores, grocery stores, pharmacies, home improvement stores, liquor
218 stores, convenience stores, gas stations, restaurants, food vending
219 trucks, farmers markets and temporary vendors of food and
220 merchandise at street fairs and festivals. Food banks, food assistance
221 programs and organizations providing services specifically for low-
222 income households are not considered to be retail establishments for
223 purposes of KMC Chapter 16.05 until March 1, 2017.

224
225 Section 7. A new Section 16.04.146 of the KMC is hereby
226 adopted to read as follows:

228 **16.04.146 Reusable bag.**

229 "Reusable bag" means a bag made of cloth, fabric or other material
230 with handles that is specifically designed and manufactured for long-
231 term multiple reuse and meets all of the following requirements:

- 232
- 233 1. Has a minimum lifetime of 125 uses, which, for the purposes of
234 this section, means the capability of loading, carrying and
235 unloading a minimum of 22 pounds over a distance of at least
236 175 feet a minimum of 125 times; and
 - 237
 - 238 2. Is machine washable.
- 239

240 Section 8. A new Section 16.04.240 of the KMC is hereby
241 adopted to read as follows:

242

243 **16.04.240 Administrative rulemaking.**

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245 The Director of Public Works shall have the authority to adopt
246 written rules that supplement and provide further detail with respect to
247 the definitions in KMC Sections 16.04.045, 16.04.085, 16.04.126,
248 16.04.127, 16.04.143 and 16.04.146. The rulemaking authority of the
249 Director of Public Works shall, among other things, clarify City
250 enforcement priorities in response to changing conditions and new
251 developments with respect to single-use carryout bags.

252

253 Section 9. A new Chapter 16.05 of the KMC entitled "Retail
254 Carryout Bags" is hereby adopted to read as follows:

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256 **16.05.010 Prohibition on disposable plastic carryout bags.**

257 No retail establishment in the City, or any of its employees, agents,
258 managers or owners, shall provide a disposable plastic carryout bag to
259 any customer.

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261 **16.05.020 Recycled paper bag pass-through charge.**

262 (a) No retail establishment in the City shall provide a paper carryout
263 bag with a manufacturer's stated capacity of one-eighth barrel (882
264 cubic inches) or larger that is not a recyclable paper bag. All retail
265 establishments in the City shall collect a pass-through charge of not less
266 than \$0.05 for each recyclable paper carryout bag provided to
267 customers that has a manufacturer's stated capacity of one-eighth
268 barrel (882 cubic inches) or larger. It shall be a violation of this section
269 for any retail establishment to pay or otherwise reimburse a customers
270 for any portion of the pass-through charge; provided, that the retail
271 establishments shall not charge or collect a pass-through charge from
272 anyone with a voucher or electronic benefits card issued under the
273 Women, Infants and Children (WIC) or Temporary Assistance to Needy
274 Families (TANF) support programs, or federal Supplemental Nutrition

Assistance Program (SNAP, also known as Basic Food), or the Washington State Food Assistance Program (FAP).

(b) All retail establishments shall indicate on the customer transaction receipt the number of recyclable paper carryout bags provided and the total amount of the pass-through charge.

(c) Prior to the effective date of this ordinance, retail establishments may voluntarily implement the restrictions on retail carryout bags allowed, as described herein, and may concurrently implement a pass-through charge.

(d) Notwithstanding the requirements in Section 16.05.020(a), nothing in this ordinance shall restrict retail establishments from providing a discount to customers who use reusable bags.

16.05.030 Enforcement and penalties.

(a) Upon determination that there has been a violation of any provision of this chapter, the city may pursue code enforcement and penalties in accordance with the provisions of KMC Chapter [1.12](#), Code Enforcement.

(b) Any person may request a temporary waiver from the requirements of the chapter by filing a request with the Director of Public Works or designee. The Director of Public Works or designee may waive any specific requirement of this chapter for a period of up to 12 months if the person seeking the waiver has shown that strict application of the specific requirement would create an undue hardship, practical difficulty or other material concern not generally applicable to other persons or retail establishments in similar circumstances. The Director of Public Works or designee's decision to grant or deny a waiver shall be in writing, shall be final and not subject to appeal.

16.05.040 No conflict with federal or state laws.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 10. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 11. This Ordinance shall be in force and effect on March 1, 2016, after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

322 Passed by majority vote of the Kirkland City Council in open
323 meeting this _____ day of _____, 2015.

324
325 Signed in authentication thereof this _____ day of
326 _____, 2015.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney