

ORDINANCE NO. O2013-016

AN ORDINANCE of the City of Tumwater, Washington, regulating the distribution of single-use plastic and biodegradable carryout bags, and requiring retail establishments to collect a pass-through charge from customers requesting recyclable paper carryout bags, and adding a new Chapter 8.14 to the Tumwater Municipal Code.

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 and county 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, the 2009 Thurston County Solid Waste Plan, adopted by the county and all towns and cities within Thurston County, including the City of Tumwater, includes an objective to increase advocacy for policy changes to improve waste reduction and recycling; and

WHEREAS, the Solid Waste Advisory Committee directed staff to review studies related to the production, use, and disposal of (single-use) plastic carryout bags, which identify significant adverse impacts on the environment; and

WHEREAS, it is the City's desire to conserve resources, reduce greenhouse gas (GHG) emissions, waste, litter, marine litter, and pollution, and to protect the public health and welfare; and

WHEREAS, less reliance on single-use carryout bags provided by retail establishments works toward the goals of conserving energy and natural resources, while reducing litter production; and

WHEREAS, plastic carryout bags are made of nonrenewable resources, and plastic never biodegrades, only breaking down into smaller and smaller particles which seep into soils and are carried into rivers, lakes, the Puget Sound, and the world's oceans, posing a threat to animal life and the natural food chain; and

WHEREAS, even though single-use paper carryout bags are made from

renewable resources and are therefore less of a litter problem than single-use plastic carryout bags, they nevertheless require significant resources to manufacture, transport, recycle and/or dispose of; and

WHEREAS, costs associated with the use, recycling, and/or disposal of single-use paper and plastic carryout bags in Tumwater and Thurston County creates a burden on the County's solid waste disposal system, including, in the case of plastic carryout bags, machine down-time and contamination of recycled paper at the materials recovery facility; and

WHEREAS, to prevent waste generation, it is in the City's interest to discourage the use of single-use, throw-away items of all types which can be accomplished through price signals; and

WHEREAS, to reduce the use of plastic and paper carryout bags in the City, it is necessary to regulate such use; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens of the City of Tumwater 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 TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 8.14 is hereby added to the Tumwater Municipal Code set forth in Exhibit A attached to this Ordinance and incorporated herein by reference.

Section 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall take effect July 1, 2014.

ADOPTED this _____ day of _____, 2013.

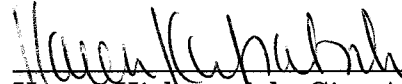
CITY OF TUMWATER

Pete Kmet, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

Published: _____

Effective Date: _____

EXHIBIT A TO ORDINANCE O2013-016

8.14

SINGLE-USE BAGS

8.14.010 Purpose and Intent.

The purpose of this chapter is to reduce the number of single-use bags in the City of Tumwater waste stream and encourage the use of reusable bags.

8.14.020 Definitions.

For purposes of this section, the following definitions 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 to a customer for the purpose of transporting food 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 potted plants, or other items where dampness may be a problem, or to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs or durable medical equipment, or to safeguard public health and safety during the transportation of prepared take-out foods and prepared liquids intended for consumption away from the retail establishment; 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. "Pass-through charge" means a charge to be collected by retailers from their customers when providing recyclable paper bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

C. "Recyclable paper bag" means a paper carryout bag that has a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger and meets the following requirements: (a) contains an average of 40 percent recycled materials, and (b) displays the percent of recycled content on the outside of the bag.

D. "Retail establishment" means any person, corporation, partnership, business venture, public sports or entertainment facilities, government agency, street vendor or vendor at public events or festivals or organizations that sell or provide merchandise, goods or materials including, without limitation, clothing, food, beverages, household goods, or personal items of any kind directly to a customer. Examples include but are not limited to department stores, clothing

stores, jewelry stores, grocery stores, pharmacies, home improvement stores, liquor stores, convenience stores, gas stations, restaurants, food vending trucks, farmers markets and temporary vendors of food and merchandise at street fairs and festivals. Food banks and other food assistance programs are not considered to be retail establishments for the purposes of this section.

E. "Single-use plastic carryout bag" means any carryout bag made from plastic or any material marketed or labeled as "biodegradable" or "compostable" that is neither intended nor suitable for continuous reuse as a carryout bag or that is less than 2.25 mils thick.

8.14.030 Implementation.

A. No retail establishment in the City of Tumwater shall provide a single-use plastic carryout bag to any customer.

B. No retail establishment in the City of Tumwater shall provide a paper carryout bag with a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger that is not a recyclable paper bag, and retail establishments shall collect a pass-through charge of not less than five-cents for each recyclable paper carryout bag provided to customers. It shall be a violation of this section for any retail establishment to pay or otherwise reimburse a customer for any portion of the pass-through charge; provided that retail establishments may not collect a pass-through charge from anyone with a voucher or electronic benefits card issued under the Women, Infants and Children (WIC) or Temporary Assistance to Needy Families (TANF) support programs, or the federal Supplemental Nutrition Assistance Program (SNAP, also known as Basic Food), or the Washington State Food Assistance Program (FAP).

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

8.14.040 Compliance.

A. Designation of Enforcement Officer. The enforcement officer(s) for violations of this Chapter for civil infraction purposes shall be a duly designated enforcement officer of Thurston County Environmental Health designated by resolution of the Board of County Commissioners upon the recommendation of the Director of Thurston County Environmental Health.

B. Upon a first violation of any part of this Chapter, a duly designated enforcement officer of Thurston County Environmental Health shall issue a Notice of Violation to the offending person or business. The Notice of Violation shall contain the date of and alleged type of violation. The Notice of Violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served upon the premises to the highest-ranking employee currently on duty at the

time of delivery.

C. If after the issuance of a Notice of Violation the enforcement officer becomes aware of subsequent non-compliance, Thurston County Environmental Health has the authority to issue a civil infraction. Any subsequent violation of this chapter shall be designated as a Class 1 civil infraction. Each day of any such violation is a separate civil infraction; a notice of infraction may be issued for each day of any such violation, however the enforcement officer is not required to issue a notice of infraction for each day of such violation. Civil infractions shall be heard and determined according to Chapter 7.80 RCW as amended, and any applicable court rules.

D. Recording of Civil Infractions. Notice of civil infraction may be recorded with the Thurston County Auditor against the property on which the violation took place in the following instances:

1. The owner of the property affected by the civil infraction has been given prior notice with an opportunity to cure the violation.

2. The person receiving the notice of civil infraction does not respond as required by RCW 7.80.080.

3. The person/business receiving the notice of civil infraction fails to appear at a hearing requested under RCW 7.80.080(3) or (4).

4. The person/business assessed a monetary penalty for the civil infraction fails to pay such penalty within the time required by law and does not appeal the penalty. If the penalty is appealed, the enforcement officer may record the notice of civil determination only if a penalty remains unpaid after a final appellate determination has been entered.

E. The Auditor shall record any notice of civil infraction submitted for recording under this section.

F. Removing of Recording. The recording of a notice of civil infraction with the Auditor shall be removed when:

1. The civil infraction proceeding has been dismissed or decided in favor of the person to whom the notice was issued; or

2. Any monetary penalty assessed for the infraction has been paid and the violation has been remedied to the satisfaction of the city and county.

G. It shall be a violation of this chapter for any retail establishment to penalize, discipline, or discriminate against any employee for performing any duty necessary to comply with the chapter.