

TOWN OF FRIDAY HARBOR
WASHINGTON
ORDINANCE NO.

**AN ORDINANCE OF THE TOWN OF FRIDAY HARBOR,
WASHINGTON, ADOPTING A NEW CHAPTER 8.14 OF
THE FRIDAY HARBOR MUNICIPAL CODE RELATING
TO THE REGULATION OF CARRYOUT BAGS;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING
AN EFFECTIVE DATE**

WHEREAS, the Town of Friday Harbor (the “Town”) desires to protect the health, safety and welfare of its citizens; 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, 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 Town 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 2014 Solid and Moderate Risk Waste Management Plan, adopted by the Town, includes goals and objectives advocating for policy changes to improve waste reduction and recycling; and

WHEREAS, it is the Town’s desire to conserve resources; reduce greenhouse gas emissions, 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 Town’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, plastic bags are recycled at less than one-third the rate of paper bags, according to the Environmental Protection Agency. 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, numerous studies, including the Master Environmental Assessment (MEA) on single-use and reusable bags, document the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling beaches. According to the Department of Ecology, plastic bags are among the 10 largest components of litter by weight on Washington roadways; and

WHEREAS, a recent study reported in Science Journal estimates 300 million tons of plastic waste was generated in 192 coastal countries in 2010, with 5.3 to 14 million tons entering the ocean; 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. In just one day, volunteers on Orcas Island beaches collected more than 10,000 pieces of micro-plastic, including pieces of disposable plastic bags; and

WHEREAS, plastic bags are among the 12 items of debris most often found in coastal cleanups. The International Coastal Cleanup Report also documents that plastic bags 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, researchers found that 12.2 percent of gulls in the Strait of Juan de Fuca consume plastic – half of which was thin-film plastic such as the plastic used to make disposable checkout bags; and

WHEREAS, researchers at the University of Washington-Tacoma have found plastic pollution in every water sample they have collected from Puget Sound; and

WHEREAS, the Town's taxpayers must bear the brunt of the clean-up costs associated with plastic-related pollution on our roads and in our waters; and

WHEREAS, environmental advocacy groups and many Town citizens support a ban on plastic bags; and

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

WHEREAS, the intent of the Town is to reduce the negative impacts noted above through the implementation of this Ordinance; and

WHEREAS, the Town shall refer retailers to the Town's website for information which will assist others in creating educational elements about the benefits of reusable bags. 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; and

WHEREAS, the Town conducted a duly advertised public hearing and has received public testimony;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FRIDAY HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. New FHMC Chapter 8.14, Carryout Bag Regulations, Adopted. A new chapter 8.14 of the Friday Harbor Municipal Code is hereby adopted to be entitled “Carryout Bag Regulations” and to read as follows:

8.14.010 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 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 or fish, whether pre-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; (e) contain prescription medication or personal care products; 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. “Recycled paper bag” means a paper carryout bag provided by a Retail Establishment to a customer at the point of sale that meets all of the following requirements:
 - 1. Except as provided in Subsection B.2 of this Section, the bag contains a minimum of 40 percent postconsumer recycled materials;
 - 2. An eight-pound capacity or smaller bag contains a minimum of 20 percent postconsumer recycled materials;
 - 3. The bag is recyclable; and
 - 4. Printed on the paper carryout bag is the minimum percentage of postconsumer content.

- C. “Retail establishment” means any person, 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.

- D. “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; and
 - 3. If made of plastic, is a minimum of at least 2.25 mils thick.
- E. “Single-use plastic carryout bag” means any bag that is less than 2.25 mils thick and is made from plastic or any nonrenewable resource.

8.14.020 Regulations.

- A. No retail establishment in the Town shall provide a single-use plastic carryout bag to a customer unless otherwise exempt pursuant to FHMC 8.14.030.
- B. Retail establishments in the Town may provide to a customer at the point of sale a reusable bag or a recycled paper bag.
- C. No person shall distribute a single-use plastic carryout bag at any Town facility, Town-managed concession, Town-sponsored event, or Town-permitted event unless otherwise permitted pursuant to FHMC 8.14.030.

8.14.030 Exemptions.

- A. Notwithstanding the regulations contained in FHMC 8.14.020, retail establishments may distribute bags to customers for use within a retail establishment to assist in the collection and transport of products to the point-of-sale within the retail establishment.
- B. The Mayor may exempt a retail establishment from the requirements of this chapter for up to a one-year period beyond the effective date of the ordinance adopting this FHMC Chapter 8.14, upon a written application by the retail establishment

showing that the 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
 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.
- C. An exemption application shall include all information necessary for the Mayor to make a 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 Mayor to determine facts regarding the exemption request.
- D. The Mayor may approve the exemption request, in whole or in part, with or without conditions.
- E. Exemption decisions are effective immediately, are final, and are not subject to administrative appeal.
- F. The Town Council may by resolution establish a fee for exemption requests. The fee shall be sufficient to cover the cost of processing the exemption request.

8.14.040 Violations.

- A. Any violation of this Chapter is a civil infraction and shall be enforced in accordance with FHMC Chapter 1.18 (Enforcement).
- B. The Town Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.
- C. Each violation of this Chapter shall be considered a separate offense.
- D. 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.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law

or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the Town, and shall take effect on April 1, 2017 and after at least five days after the date of publication.

ADOPTED BY THE TOWN COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2016.

TOWN OF FRIDAY HARBOR

Carrie Lacher, Mayor

ATTEST/AUTHENTICATED:

Amy Taylor, Town Clerk

Approved as to form:

Michael R. Kenyon, City Attorney

Filed with the Town Clerk:

Passed by the Town Council:

Date of Publication:

Effective Date: