

ORDINANCE No: _____

AN ORDINANCE of the City of Issaquah, regulating the distribution of retail carryout bags, requiring retail establishments to collect a pass-through charge from customers requesting recyclable paper carryout bags, and adopting a new chapter in the Issaquah Municipal Code Chapter 8.05 - Retail Carryout Bags; amending Section 1.36.030 IMC to add to the schedule of infractions; authorizing the administration to conduct a reusable bag distribution and public education effort; providing for severability; and providing for an effective date.

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

WHEREAS, less reliance on carryout bags provided by retail establishments works toward those goals; and

WHEREAS, the post consumer environmental effects of plastic carryout bags are detrimental to marine life, wildlife and public health; and

WHEREAS, plastic carryout bags are made from nonrenewable resources and do not biodegrade, but only break down into smaller and smaller particles which seep into soils or are carried into rivers and lakes, Puget Sound and the world's oceans, posing threats to animal life and the natural food chain; and

WHEREAS, paper carryout bags are made from renewable resources and do not pose the same litter and, in particular, marine litter problems as plastic carryout bags, but nevertheless require significant resources to manufacture, transport and recycle or dispose; and

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

WHEREAS, to conserve and protect resources, 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 people of the City of Issaquah to reduce plastic carryout bags and encourage greater use of reusable bags, and to protect the environment;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ISSAQAH DO ORDAIN AS FOLLOWS:

Section 1. New Chapter Added. The Issaquah Municipal Code is amended by adding a new Chapter 8.05, Retail Carryout Bags, to read as follows:

Chapter 8.05 Retail Carryout Bags

Section 8.05.010	Definitions
Section 8.05.020	Types of Retail Carryout Bags Permitted
Section 8.05.030	Recycled Paper Bag Pass-Through Fee
Section 8.05.040	Enforcement and Penalties
Section 8.05.050	Severability
Section 8.05.060	No Conflict with Federal or State Law

8.05.010 Definitions

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, goods or merchandise out of the establishment. Carryout bags do not include: (a) 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 to safeguard public health and safety during the transportation

of prepared take-out foods intended for consumption away from the retail establishment; or (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.

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 meets the following requirements: (a) contains a minimum average of 40 percent post-consumer recycled materials, (b) the paper carryout bag is accepted for recycling in the City’s recycling and composting program and (c) displays the minimum percent of post-consumer 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, food assistance programs and organizations providing services specifically for low-income households are not considered to be retail establishments for the purposes of this chapter 8.05.

E. “Disposable plastic carryout bag” means any carryout bag made from plastic or bioplastic, including materials marketed or labeled “biodegradable” or “compostable,” that is not a reusable bag.

F. “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 the purposes of this section, means the capability of loading, carrying and unloading a minimum of 22 pounds over a distance of at least 175 feet a minimum of 125 times;

2. Is washable, whether by machine or hand;
3. If made of plastic, meets all of the requirements above and is a minimum of 2.25 mils thick.

Section 8.05.020 Prohibition on Disposable Plastic Carryout Bags

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

Section 8.05.030 Recycled Paper Bag Pass-Through Fee

A. No retail establishment in the City 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. All retail establishments in the City shall collect a pass-through fee of not less than five-cents for each recyclable paper carryout bag provided to customers that has a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger. 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 fee; provided that retail establishments shall not charge or collect a pass-through fee 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).

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 fee.

8.05.040 Enforcement and Penalties.

A. Any person who violates any of the provisions of this Chapter shall be cited and liable for a civil infraction as set forth in Chapter 1.36 IMC, provided however, that the Code Enforcement Officer shall instead issue a written warning to any person he determines is violating any provision of this Chapter when such violation is the first instance of non-compliance known to the Code Enforcement Officer. If after issuing a written warning, the Code Enforcement Officer becomes aware of subsequent non-compliance, he shall apply for or impose the sanctions described in this section.

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

8.05.050 **Severability.**

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.

8.05.060 **No Conflict with Federal or State Law.**

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 2. Section 1.36.030 Amended. A new subsection is hereby added to the schedule in Section 1.36.030(A) to read as follows:

"8.05.040, Retail Carryout Bags \$250"

Section 3. Reusable Bag Distribution and Public Education Authorized. To further promote the use of reusable shopping bags and reduce the quantity of disposable carryout bags in use, the Office of Sustainability, or other designee as determined by the City Administrator, in the initial implementation of this ordinance is authorized to make reusable carryout bags available to the public at low cost or free-of-charge, targeting such programs to reach low-income households and to promote broad awareness in the community of the use and benefits of reusable shopping bags.

Section 4. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication. The effective date of this Chapter shall be January 1, 2013, provided, however, that retail establishments may voluntarily implement the restrictions on retail carryout bags allowed, as described therein, and may concurrently implement a recycled paper bag pass-through fee.

Passed by the City Council of the City of Issaquah, the _____ day of _____, 2012.

Approved by the Mayor of the City of Issaquah the _____ day of _____, 2012.

APPROVED:

AVAFRISINGER, MAYOR

ATTEST/AUTHENTICATED:

CHRISTINE EGGERS, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
WAYNE D. TANAKA

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____