

ORDINANCE NO. 4750

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO PLASTIC AND RECYCLABLE PAPER CARRYOUT BAGS AND REQUIRING RETAIL ESTABLISHMENTS TO COLLECT A PASS-THROUGH CHARGE FROM CUSTOMERS, AND ADDING A NEW CHAPTER TO THE ELLENSBURG CITY CODE ENTITLED "5.64 – CARRYOUT BAG REGULATION."

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 implement effective waste reduction strategies, conserve resources, reduce greenhouse gas emissions, waste, litter and marine litter and pollution, and to protect the public health and welfare; and

WHEREAS, there is a need for conserving energy and natural resources, controlling litter, and decreasing reliance on plastic and paper carryout bags provided by retail establishments; and

WHEREAS, even though paper carryout bags are made from renewable resources and are less of a litter and particularly marine litter problem than plastic carryout bags, they nevertheless require significant resources to manufacture, transport and recycle or dispose of; 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 Ellensburg that regulation require a pass-through charge on the use of plastic and 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 Ellensburg, Washington do hereby ordain as follows:

Section 1. A new Chapter entitled “5.64 – Carryout Bag Regulation” is hereby added to the Ellensburg City Code to read as follows:

Sections

5.64.020 Purpose.

5.64.040 Definitions.

5.64.060 Carryout bag regulations.

5.64.080 Required signage for retail establishments.

5.64.100 Compliance and penalties.

5.64.020 Purpose.

The purpose of this chapter is to encourage the use of reusable bags at retail establishments so as to reduce litter in the city and the city’s waterways, and to also reduce the number of single-use bags in the city’s waste stream.

5.64.040 Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

“Carryout bag” means any 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 use to transport or carry away purchases such as merchandise, goods or food from the retail establishment. Carryout bags do not include:

1. Bags used by consumers inside stores to package bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards or small hardware items such as nails, bolts or screws, contain or wrap frozen foods, meat or fish regardless of whether they are prepackaged, contain or wrap flowers, potted plants or other items where dampness may be a problem, contain unwrapped prepared foods or bakery goods, contain prescription drugs; or
2. A bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recyclable paper bag or reusable bag, such as prepared

take-out foods or prepared liquids intended for consumption away from the retail establishment; or

3. Newspaper bags, door-hanger bags, tire bags, laundry-dry cleaning bags or bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste or yard waste.

“Paper carryout bag” means any carryout bag made from paper.

“Pass-through charge” means a charge to be collected by retailers from their customers when providing plastic or recyclable paper carryout bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

“Plastic carryout bag” means any carryout bag made from plastic or any material marketed or labeled as “biodegradable” or “compostable” that is less than 2.25 mils thick.

“Recyclable paper bag” means a paper bag that has a manufacturer’s stated capacity of one-eighth barrel (882 cubic inches) and meets the following requirements:

1. Contains at least forty percent post-consumer recycled content;
2. Is one hundred percent recyclable; and
3. Displays the minimum percent of post-consumer content on the outside of the bag.

“Retail establishment” means any person, corporation, partnership, business venture, entertainment facility, 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 clothing stores, jewelry stores, grocery stores, pharmacies, home improvement stores, home decor 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 chapter.

“Reusable bag” means a bag that:

1. Is washable, whether by machine or hand; and
2. If made from plastic, is a minimum of 2.25 mils thick.

5.64.060 Carryout bag regulations.

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 carryout bag.

B. Each retail establishment that provides a customer with a plastic carryout bag or a recyclable carryout bag shall collect a pass-through charge of not less than five cents for each plastic or recyclable paper carryout bag provided.

C. It shall be a violation of this section for any retail establishment to pay or otherwise reimburse a customer for any portion of the plastic or recyclable paper carryout bag 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).

D. All retail establishments shall indicate on the customer transaction receipt the number of plastic and recyclable paper carryout bags provided to customers and the total amount of the pass-through charge.

5.64.080 Required retail establishment signage.

Every retail establishment subject to the collection of the carryout bag fee in this chapter must post signage clearly indicating the per bag charge for carryout bags.

5.64.100 Compliance and penalties.

A. Upon a first violation of any part of this chapter, the code enforcement officer may 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.

B. If after the issuance of a notice of violation the code enforcement officer becomes aware of subsequent noncompliance, he or she 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. Civil infractions shall be heard and determined according to Chapter 7.80 RCW as amended, and any applicable court rules.

C. 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 this chapter.

Section 2. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

Section 3. Corrections. Upon the approval of the City Attorney, 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. Effective Date. This ordinance shall take effect and be in force on January 1, 2018.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the __ day of November, 2016.

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



CITY ATTORNEY

Publish:

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4750 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4750 was published as required by law.

COREEN M. RENO