

ORDINANCE 1398

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE DISTRIBUTION OF CARRYOUT BAGS; ADDING A NEW CHAPTER 5.14 TO THE GIG HARBOR MUNICIPAL CODE ENTITLED "BRING YOUR OWN BAG"; PROHIBITING THE USE OF CARRYOUT BAGS EXCEPT REUSABLE CARRYOUT BAGS AND RECYCLED-CONTENT PAPER CARRYOUT BAGS; REQUIRING RETAIL ESTABLISHMENTS TO COLLECT A PASS-THROUGH CHARGE FROM CUSTOMERS REQUESTING RECYCLED PAPER AND REUSABLE CARRYOUT BAGS; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature ("Legislature"), in RCW 70.95.010, established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the 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 Legislature, in RCW 70.95.010(6)(c), found that it is the responsibility of city 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 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 City's residents; and

WHEREAS, less reliance on single-use carryout bags contributes toward the goals of conserving energy and natural resources while reducing greenhouse gases and litter; and

WHEREAS, plastic bags are made of nonrenewable resources and never biodegrade; they photo-degrade and can take hundreds of years to break down into tiny toxic bits which can seep into the soil, waterways, lakes, and bays, posing a threat to animal life and the natural food chain; and

WHEREAS, the Ocean Conservancy cited plastic bags as within the 12 most collected items in the 2017 Coastal Cleanup in Washington State; and

WHEREAS, the Washington State Department of Ecology's "Beyond the Curb" study of commingled residential recyclables from the Southwest Region estimates that it takes \$700-\$1,000 per ton for recycling centers to remove plastic films from other recyclables; and

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

WHEREAS, regulations that prohibit the use of single-use plastic carryout bags and require a pass-through charge on all recycled-content paper carryout bags will encourage shoppers to bring their own reusable carryout bags and protect the environment; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety, and welfare of the citizens of the City to regulate carryout bags; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 5.14 – Added. A new Chapter 5.14 is hereby added to the Gig Harbor Municipal Code to read as follows:

Chapter 5.14 Bring Your Own Bag

5.14.010 Definitions.

A. "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. This also includes bags provided for home delivery. 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 recycled-content 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.

B. "Recycled-content paper carryout bag" means a paper carryout bag provided by a store to a customer at the point-of-sale that meets all of the following requirements:

1. The paper carryout bag contains an average of 40% postconsumer recycled materials;
2. The paper carryout bag is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City;
3. The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard D6400, as published in Master Environmental Assessment on Single Use and Reusable Bags, March 2010; 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, vender, 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, by way of example, and not limitation, any grocery store, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, convenience store, and any other retail store or vendor, including temporary ones at farmers markets, street fairs, and festivals.

D. "Reusable carryout bag" means a bag made of cloth or other material with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

1. Is machine washable or made from a material that can be cleaned or disinfected; and
2. If made of film plastic, in a minimum of at least 2.25 mils.

E. "Single-use plastic carryout bag" means any bag, provided at check out, that is less than 2.25 mils thick and is made from plastic or any nonrenewable resource.

F. "Pass-through charge" means a charge to be collected by retailers from their customers when providing recycled-content paper carryout bags, and retained by retailers to offset the cost of bags and other costs related to the pass-through charge.

5.14.020 Regulations.

A. No retail establishment in the city shall provide a carryout bag to a customer unless otherwise permitted pursuant to this chapter.

B. No retail establishment shall distribute a carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise permitted pursuant to this chapter.

C. Retail establishments in the City may provide to a customer at the point-of-sale a reusable carryout bag or a recycled-content paper carryout bag.

D. No retail establishment in the City shall provide a paper carryout bag that is not 40% post-consumer recycled paper.

E. A retail establishment may make reusable carryout bags available to customers through sale.

F. No retail establishment in the City shall use or provide polyethylene or other non-compostable plastic film bags tinted green or brown for customers to bag products in stores, as carryout bags, or for home delivery.

G. No non-compostable film bag that retail establishments provide to customers to bag products in stores, as carryout bags, or for home delivery may be labeled with the term "biodegradable," "degradable," "decomposable," "compostable" or any similar terms, or in any way imply that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

H. Each retail establishment may provide a customer with a recycled-content paper carryout bag and collect a pass-through charge up to their cost.

5.14.030 Exemptions.

A. Notwithstanding the requirements contained in MMC 5.14.020(I), a retailer may not collect a pass-through charge from anyone using a voucher or electronic benefits card issued under programs including, but not limited to, Women Infants and Children (WIC); Temporary Assistance to Needy Families (TANF); Federal Supplemental Nutrition Assistance Program (SNAP), also known as Basic Food; and the Washington State Food Assistance Program (FAP).

B. Food banks and other food assistance programs are exempt from the requirements for this chapter.

C. The distribution of used or previously distributed plastic bags.

5.14.040 Violations. Violations will be complaint based.

A. During the first 365 days and upon complaint of a first violation of any part of this chapter, the code enforcement officer may issue a written

notice of violation to the offending business. The written notice of violation shall contain the date of and alleged type of violation. The written notice of violation shall be regarded as a warning and no other sanctions shall be implemented. Notice shall be served upon the name on the business license.

B. During the second year and upon complaint of a violation of any part of this chapter, the code enforcement officer may issue in person notice of violation to the offending business. The in person 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 name on the business license.

C. During the third and successive years, and after the issuance of a written notice of violation, if the code enforcement officer becomes aware of subsequent noncompliance, he or she has the authority to issue a civil infraction to the business. Any violation of this chapter shall be designated as a Class 1 civil infraction with a fine not exceeding two hundred and fifty dollars (\$250.00) for any other violation that occurs following the issuance of a warning notice. 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.

D. 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 section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force 180 days after passage and publication of an approved summary consisting of the title.


PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 10th day of December, 2018.

CITY OF GIG HARBOR



Mayor Kit Kuhn

ATTEST/AUTHENTICATED:


Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney


Angela G. Summerfield

FILED WITH THE CITY CLERK: 11/06/18
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