CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 18-0465

AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON ADOPTING A PLASTIC BAG POLICY;
AND ADOPTING A NEW CHAPTER 8.50 OF THE
KENMORE MUNICIPAL CODE.

WHEREAS the Washington State Legislature ("Legislature"), in RCW 70.95.010(4), 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, the City finds that composting is threatened because of contamination by confusingly colored, marked and look-alike materials, including some non-compostable plastic film bags; and

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WHEREAS, it is in the City's interest that contamination in local compost be reduced to ensure local compost is marketable and viable for use in local gardens, farms, landscaping, and surface water and transportation projects; 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 carryout bags will encourage shoppers to bring their own reusable carryout bags, reduce the cost of solid waste disposal by the City, 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;

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

Section 1. Adoption. A new City of Kenmore Municipal Code Chapter 8.50 is hereby created and adopted to read as follows:

Chapter 8.50
PLASTIC BAG POLICY

8.50.010 Definitions.

A. "Compostable" means that the product completely breaks down into a stable product due to the action of microorganisms in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment meeting the compost quality standards found under WAC 173-350-220 for metals, physical 1 parameters, pathogens, manufactured inert material, and other testing parameters set by the local Health Department, has been found to degrade satisfactorily at the composting facility receiving the material, meets standard specification ASTM D6400, and has been certified as compostable by the Biodegradable Products Institute or similar national or international certification authority.

B. "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 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.

C. "Recycled 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. Except as provided in subsection 2 of this subsection (C), the paper carryout bag contains an average of 40% postconsumer recycled materials;

2. An eight-pound or smaller recycled paper bag shall contain a minimum of 20% postconsumer recycled material;

3. 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;

4. 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

5. Printed on the paper carryout bag is the minimum percentage of postconsumer content.

D. "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 costumer: 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.
E. "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 thick.

F. "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.

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

8.50.020 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, subject to Chapter 8.50 KMC, provide to a customer at the point-of-sale a reusable carryout bag or a recycled paper carryout bag.

D. 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 recycled paper carryout bag

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. Any film bags meeting the definition of compostable that retail establishments provide to customers for food or other products, such as vegetables bagged in stores prior to checkout, must be tinted green or brown and shall be clearly labeled "COMPOSTABLE," including language following the Federal Trade Commission's "Green Guides."
H. No 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," 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.

I. Each retail establishment that provides a customer with a reusable carryout bag or a recycled paper carryout bag shall collect a pass-through charge of not less than $0.05 for each reusable or recycled paper carryout bag provided.

8.50.030 Exemptions.

A. Notwithstanding the requirements contained in Chapter 8.50 KMC, retailer may not collect a pass-through charge from anyone with 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 city manager or designee may exempt a retail establishment from the requirements of this chapter for up to a one-year period, upon a request 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 a pass-through charge cannot be collected; 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.

D. If a retail establishment requires an exemption beyond the initial exemption period, the retail establishment must reapply prior to the end of the exemption period and must demonstrate continued undue hardship if it wished to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.

E. An exemption request shall include all information necessary for the City to make its decision, including, but not limited to, documentation showing the factual support for the claimed exemption. The city manager or designee may
require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

F. The city manager or designee may approve the exemption request, in whole or in part, with or without conditions.

G. Exemption decisions are effective immediately. A party aggrieved by a final decision may appeal or seek review of the decision in accordance with applicable law. Unless another period of time applies under applicable law or court rule, an appeal of the decision must be filed within 21 calendar days from the date the final decision was served personally or placed in the United States mail, postage prepaid and properly addressed.

H. The city council may, by resolution, establish a fee for exemption requests. The fee shall be sufficient to cover the costs of processing the exemption request.

8.50.040 Violations.

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. Effective Date. This Ordinance shall take effect and be in full force starting January 1, 2019.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 123 DAY OF ________, 2018.
CITY OF KENMORE

David Baker, Mayor

ATTEST.AUTHENTICATED:

Kelly Chelin, City Clerk

Approved as to form:

Rod Kaseguma, City Attorney

FILED WITH THE CITY CLERK: 7/23/18
PASSED BY THE CITY COUNCIL: 7/23/18
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