

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2360

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, RELATING TO REUSABLE BAGS; ADDING A NEW CHAPTER 8.21 OF THE SNOHOMISH MUNICIPAL CODE ENTITLED "REUSABLE BAGS"; AND AMENDING SNOHOMISH MUNICIPAL CODE SECTION 1.01.080(A); PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, citizens have requested the City Council enact an Ordinance relating to disposable plastic waste, including single-use plastic bags, out of concern for the environment; and

WHEREAS, the City Council finds it to be in the interest of the public health, safety and welfare of the citizens of Snohomish to conserve resources, reduce greenhouse gas emissions, waste, litter, and marine pollution, and to protect wildlife, all of which increase the quality of life for the City's residents; and

WHEREAS, the State Legislature, in RCW 70.95.010(4), established waste reduction as a fundamental strategy of solid waste management, including changing purchasing practices to reduce the amount of waste that becomes a governmental responsibility; and

WHEREAS, the State 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, 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 most collected items in the ocean trash index for Washington State per the Building a Clean Swell 2018 Report; and

WHEREAS the Washington State Department of Ecology's 2010 "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

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, the City Council solicited feedback and comments from residents and businesses, and considered various studies, reports, articles, and other references, including, but not limited to *Plastic Bag Staff Report, City of Kirkland (2013)* and *Zero Waste Washington: Environmental Impact of Plastic Bags* (December 4, 2018); 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 help 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 SNOHOMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

A NEW CHAPTER 8.21 of the Snohomish Municipal Code is hereby adopted which shall read as follows:

Section 1.

8.21.010 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 (as currently enacted or later amended) 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. 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.

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, the paper carryout bag contains at least 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, 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.

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. Has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capacity of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet,

2. Is machine washable or made from a material that can be cleaned or disinfected, and

3. 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.

8.21.020 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 this Ordinance, 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 paper recyclable carryout bag shall collect a pass-through charge of not less than \$0.10 for each recyclable paper carryout bag provided.

8.21.030 Exemptions.

- A. Notwithstanding the requirements contained in this Ordinance, a 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 of this chapter.

C. The Mayor or designee may exempt a retail establishment from the requirements of this chapter for up to a one-year period, upon a written 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 as to why the exemption should be 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 Mayor or designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

F. The Mayor or designee may, in his or her sole discretion, 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 concerning the request for an exemption 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.

8.21.040 Violations.

A. It shall be unlawful and shall constitute a civil infraction to violate or be in conflict with this Ordinance. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this ordinance occurs, shall constitute a separate violation.

B. Any person, firm, business, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of SMC 1.01.080.

C. Upon a first violation of any part of this chapter, a notice of violation may issue to the offending person, firm, business, corporation, or association or any agent thereof. 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 of the business currently on duty at the time of delivery.

D. If after the issuance of a first notice of violation the offender commits subsequent violations, the penalty for each offense shall be a maximum fine of \$250.00.

E. 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.

8.21.050 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Snohomish hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

8.21.060 General Duty.

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 2. SMC 1.01.080(A) is hereby amended to read as follows:

1.01.080 Penalties for Violations.

A. Any person, firm, corporation, their agents, or servants who shall violate any of the provisions of the following listed Chapters of the Snohomish Municipal Code has committed a civil violation for which penalties may be assessed for each day or part of a day that the violation continues unless otherwise provided: Chapters 3.22, 3.26, 5.02, 5.10, 5.36, 5.44, 5.52, 7.12, 8.12, 8.20, 8.21, 9.94, 12.12, 12.20, 12.40, 13.04, 14.85, 15.04, and 20.04.

Section 3. Savings. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 4. Authority to make necessary corrections. 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 5. Effective Date. This Ordinance shall become effective January 1, 2020.

ADOPTED by the City Council and **APPROVED** by the Mayor this 19th day of February, 2019.

CITY OF SNOHOMISH

By John T. Kartak
JOHN T. KARTAK, MAYOR

ATTEST:

By Pat Adams
PAT ADAMS, CITY CLERK

APPROVED AS TO FORM:

By Grant K. Weed
GRANT K. WEED, CITY ATTORNEY

Date of Publication: 2/23/19

Effective Date: January 1, 2020