



**SUBSTITUTE NO. 2
ORDINANCE NO. 28367**

1 AN ORDINANCE regulating the distribution of carryout bags; amending
2 Chapter 12.09 of the Tacoma Municipal Code by adding thereto a new
3 Section 12.09.215, entitled “Bring Your Own Bag”; prohibiting the use of
4 carryout bags except reusable carryout bags and recycled paper carryout
5 bags; requiring retail establishments to collect a pass-through charge from
6 customers requesting recycled paper and reusable carryout bags; providing
7 for reporting of the aggregate number of recycled paper carryout bags
8 annually distributed; establishing penalties; providing for outreach; providing
9 for a study of the impacts of the requirements of the new Section 12.09.215;
10 establishing an effective date; and providing for severability.

11 WHEREAS the Washington State Legislature (“Legislature”), in
12 RCW 70.95.010(8)(a), established waste reduction as the first priority for the
13 collection, handling, and management of solid waste, and

14 WHEREAS the Legislature, in RCW 70.95.010(4), found that it is
15 “necessary to change manufacturing and purchasing practices and waste
16 generation behaviors to reduce the amount of waste that becomes a
17 governmental responsibility,” and

18 WHEREAS the Legislature, in RCW 70.95.010(6)(c), found that it is the
19 responsibility of city governments “to assume primary responsibility for solid waste
20 management and to develop and implement aggressive and effective waste
21 reduction and source separation strategies,” and

22 WHEREAS, in May 2014, the City Council adopted Resolution No. 38907,
23 reaffirming the goal of diverting 70 percent of the City’s waste from landfilling by
24 2018, and called for strategies to reduce consumption of single-use carryout bags,
25 bottles, and other products, which can be accomplished through restrictions and
26 price signals, and



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WHEREAS, as demonstrated in the City’s STAR Communities 4 Star rating, Lifecycle City resolution, and Environmental Action Plan, 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 10 most collected items in the 2013 Coastal Cleanup in Washington State, and

WHEREAS, as noted in the Seattle Public Utilities’ “Alternatives to Disposable Shopping Bags and Food Service Items,” although single-use paper carryout bags are made from renewable resources and are less environmentally impactful with regard to litter than single-use plastic carryout bags, they do require significant environmental resources to manufacture, transport, recycle, and/or dispose of, and

WHEREAS the Washington State Department of Ecology’s “Beyond the Curb” study of commingled residential recyclables from the Southwest Region, which includes Pierce County, estimates that it takes \$700-\$1,000 per ton for recycling centers to remove plastic films from other recyclables, and



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

3 WHEREAS an Environmental Checklist for a non-project action has been
4 prepared under the State Environmental Policy Act (RCW Chapter 43.21.C),
5 pursuant to Washington Administrative Code Chapter 197-11; and a Notice of
6 Adoption and a Determination of Non-Significance ("DNS") was issued on June 6,
7 2016, with the comment period ending on June 20, 2016, and

8 WHEREAS the City Council solicited feedback and comments from
9 residents and businesses, and considered various studies, reports, articles, and
10 other references, including, but not limited to: *Plastic Bag Staff Report*, City of
11 Kirkland (2013); *The Most Popular Tax in Europe? Lessons From the Irish Plastic*
12 *Bags Levy*, Frank Convey, Simon McDonnell, Susana Ferreira; Environmental
13 and Resource Economics, *Environ Resource Econ* (2007) 38:1-11; *The Evolution*
14 *of SF's Plastic Bag Ban*, Jennie Reilly Romer, Golden Gate University
15 Environmental Law Journal, 1 Golden Gate Env't'l L.J. 439 (2007); and
16 *Assessment of the Potential for Cross Contamination of Food Products by*
17 *Reusable Shopping Bags*, American Chemistry Council – By Charles P. Gerba,
18 David Williams, Ryan G. Sinclair (2010), and

19
20 WHEREAS regulations that prohibit the use of single-use plastic carryout
21 bags and require a pass-through charge on all carryout bags will encourage
22 shoppers to bring their own reusable carryout bags, reduce the cost of solid waste
23 disposal by the City, and protect the environment, and

24 WHEREAS the City Council finds that it is in the best interest of the health,
25 safety, and welfare of the citizens of the City that the proposed amendment to
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1 Chapter 12.09 of the Tacoma Municipal Code, attached hereto as Exhibit "A," be
2 approved; Now, Therefore,

3 BE IT ORDAINED BY THE CITY OF TACOMA:

4 Section 1. That Chapter 12.09 of the Tacoma Municipal Code ("TMC") is
5 hereby amended by the addition of a new section, to be known and designated as
6 Section 12.09.215, "Bring Your Own Bag," consisting of six subsections to read as
7 set forth in the attached Exhibit "A."

8 Section 2. That the City Manager is directed to establish and conduct
9 focused outreach with low-income populations and communities of color to provide
10 assistance in achieving compliance with the requirements of TMC 12.09.215.

11 Section 3. That the City Manager is directed to conduct a study to
12 evaluate the impacts of TMC 12.09.215 on low-income populations and
13 communities of color, to be completed within 18 months of implementation of
14 TMC 12.09.215.

15 Section 4. Commencing in 2018 and ending in 2020, the City Manager
16 shall (1) aggregate the data received from the annual reports voluntarily
17 submitted by retail establishments pursuant to TMC 12.09.215.C, annually report
18 the aggregate totals to the City Council, and report the annual and cumulative
19 percentage change in the number of recycled paper carryout bags distributed;
20 (2) conduct an annual voluntary survey of retail establishments regarding the
21 impact of TMC 12.09.215 on retail establishments, including the challenges of
22 implementation, improvements that could be made, whether carryout bag
23 practices have changed, and impacts to customer experiences; and (3) report the
24 results of the survey to the City Council.
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Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance 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 ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 6. This ordinance shall become effective at 12:01 a.m. 365 days after enactment.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney



EXHIBIT "A"

CHAPTER 5.55
BRING YOUR OWN BAG

Sections:

- ~~5.55.010 Definitions.~~
- ~~5.55.020 Regulations.~~
- ~~5.55.030 Pass Through Charge.~~
- ~~5.55.040 Exemptions.~~
- ~~5.55.050 Enforcement.~~
- ~~5.55.060 Violations; Penalties; Appeal.~~

Chapter 12.09

SOLID WASTE, RECYCLING, AND HAZARDOUS WASTE

Sections:

- 12.09.010 Purpose.
- 12.09.020 Authority.
- 12.09.030 Definitions.
- 12.09.040 General requirements.
- 12.09.050 Transportation.
- 12.09.060 Requirements for containers.
- 12.09.070 Special permits.
- 12.09.080 Assistance to elderly and/or disabled individuals.
- 12.09.090 Rate reduction for low-income senior and low-income disabled individuals.
- 12.09.092 Authority to allow residential or commercial service.
- 12.09.095 Disposal rate reduction for qualifying nonprofit materials salvage/recycling corporation(s).
- 12.09.100 Collection.
- 12.09.105 Pilot Projects.
- 12.09.110 Residential automated and semi-automated services.
- 12.09.120 Commercial services.
- 12.09.130 Use of Recovery and Transfer Center Facility (disposal site) – General.
- 12.09.140 Disposal rates.
- 12.09.150 *Repealed.*
- 12.09.160 Billing periods, payments and collections.
- 12.09.170 Disposal area automated scale system cards.
- 12.09.180 State tax.
- 12.09.190 Prohibited material.
- 12.09.200 Disposal of asbestos-containing material.
- 12.09.210 Recycling – General.
- 12.09.215 **Bring Your Own Bag.**
- 12.09.220 Enforcement.
- 12.09.230 Violations – Penalties.
- 12.09.240 Notice of violations – Civil penalties.
- 12.09.250 Appeals of special permits.

~~5.55.010 Definitions.~~

12.09.215 Bring Your Own Bag.

A. Definitions.

“Agent” means any director, partner, high managerial agent, officer, or employee of a retail establishment, or any other person who is authorized to act on behalf of the corporation.



1 ~~B.~~ “Carryout bag” means any bag that is provided by a retail establishment at the point-of-sale to a customer for use to transport or carry away purchases, such as merchandise, goods, or food from the retail establishment. “Carryout bag” does not include:

2 1. Product Bags; or

3 2. Newspaper bags, door-hanger bags, laundry dry cleaning bags, tire bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

4 ~~C.~~ “Corporation” means any firm, business, association, partnership, limited liability company, corporation, or other legal entity, public or private, however organized.

5 ~~D.~~ “Department” means the Environmental Services Department.

6 ~~E.~~ “Director” means the Director of the Environmental Services Department and the Solid Waste Division Manager, as designee.

7 ~~F.~~ “High managerial agent” means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of policy of the corporation or the supervision in a managerial capacity of subordinate employees.

8 ~~G.~~ “Pass-through charge” means the charge which must be collected by a retail establishment from its customers when providing a recycled paper or reusable carryout bags. The pass-through charge is retained by the retailer.

9 ~~H.~~ “Product bag” means any bag provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point-of-sale within the retail establishment. Product bags include, by way of example, bags that are used by consumers inside stores to: (a) package bulk items such as fruit, vegetables, mushrooms, nuts, grains, candy or small hardware items; (b) contain or wrap frozen foods, meat, or fish, whether packaged or not; (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem; (d) contain unwrapped prepared foods or bakery goods; (e) contain pharmacy prescriptions; and (f) safeguard public health and safety during the transportation of hot, prepared take-out foods and prepared liquids intended for consumption away from the premises.

14 ~~I.~~ “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:

15 1. Except as provided in subsection 2 of this subsection (I), the paper carryout bag contains an average of 40 percent postconsumer recycled materials;

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

17 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;

18 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

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

21 ~~J.~~ “Retail establishment” means any corporation 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.

23 ~~K.~~ “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:

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

25 2. If made of film plastic, is a minimum of at least 2.25 mils thick.

26 ~~L.~~ “Single-use plastic carryout bag” means any bag made from plastic or any material marketed or labeled as “biodegradable” or “compostable” that is not intended for continuous reuse as a carryout bag and that is less than 2.25 mils thick.



5.55.020B. Regulations.

1 A1. No retail establishment in the City shall provide a carryout bag to a customer unless otherwise permitted pursuant to this chapter.

2 B2. 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.

3 C3. Retail establishments in the City may, subject to TMC 5.55.030, provide to a customer at the point-of-sale a reusable carryout bag or a recycled paper carryout bag.

4 D4. A retail establishment may make reusable carryout bags available to customers through sale.

5 5.55.030C. Pass-Through Charge.

6 A1. Retail establishments that provide a customer with a carryout bag shall charge the customer a reasonable pass-through charge of not less than five cents. Retailers shall not collect a pass-through charge for any bags brought to the retail establishment by a customer.

7 B2. Retail establishments shall indicate on the customer transaction receipts the total amount of the pass-through charge.

8 C3. A retail establishment may provide a reusable carryout bag, free of charge, to any customer during a limited time, in-store promotional event. Such events shall not exceed a total of 12 days within any consecutive 12-month period.

9 4. Annual Reporting. All retail establishments required to levy and collect pass-through charges pursuant to this chapter, shall report to the Director the aggregate number of recycled paper carryout bags provided to customers as provided below:

10 a. Reporting Obligation. On an annual basis, beginning in 2018 and ending in 2020, on or before September 30th of each year, a retail establishment shall report the number of recycled paper carryout bags provided to customers by the retail establishment from August 1st of the previous year through July 31st of the reporting year.

11 b. If an operator of a retail establishment has more than one location subject to this ordinance, the operator may aggregate the total number of bags to be reported for all subject locations into a single report. The reporting form shall be signed by a responsible officer or agent of the retail establishment. The individual signing the report shall swear or affirm that the information in the form is true and complete.

12 5.55.040D. Exemptions.

13 A1. Notwithstanding the requirements contained in TMC 5.55.030, retailers 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).

14 B2. Food banks and other food assistance programs are exempt from the requirements of this chapter.

15 3. Retail establishments engaged in retail sales occurring at any special event or show licensed under TMC Chapter 6B.230 (Temporary Licenses), or exempt from the temporary licensing requirements pursuant to TMC 6B.230.050(A) through (E), are not subject to the requirements of this chapter.

16 C4. The Director 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:

17 1a. 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

18 2b. 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.

19 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 wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed one year.



1 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 Director may require the applicant to provide additional information to permit the City to determine facts regarding the exemption request.

2 The Director may approve the exemption request, in whole or in part, with or without conditions.

3 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.

4 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.

5 ~~5.55.050~~DE. Enforcement.

6 The Director is authorized to establish regulations consistent with this chapter, and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting the premises of any retail establishment to verify compliance, issuance of a notice of violation, and enforcement of other remedies available at law.

7 ~~5.55.060~~EF. Violations; Penalties; Appeal.

8 A1. Any retail establishment violating or failing to comply with any of the provisions of this chapter, or any lawful rule or regulation adopted by the Director pursuant thereto, shall be guilty of a civil violation.

9 B2. A retail establishment is strictly liable for the acts or omissions of its agents that constitute a civil violation.

10 C3. It is the responsibility of the retail establishment to contact the Department to request inspection for compliance with this code.

11 D4. Penalties for violations of this chapter may be assessed in the amount of \$250 for each day during which the violation continues.

12 E5. Contents of Notice of Civil Violation. The notice of civil violation shall set forth and contain:

13 4a. The name and last known address of the retail establishment;

14 2b. The name, business address, and telephone number of the enforcement officer issuing the notice of civil violation;

15 3c. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

16 4d. A description of the nature, extent, and time of the violation and a reference to the regulation or provision of the Tacoma Municipal Code ("TMC") that has been violated;

17 5e. A statement setting forth the monetary penalty imposed and each violation or violations that are subject to such monetary penalty;

18 6f. A statement that the retail establishment to which the notice of civil violation is issued may appeal the notice of civil violation;

19 7g. A statement that a notice of civil violation issued pursuant to this chapter represents a determination that the violation or violations identified in the notice has/have been committed and that this determination is final and conclusive unless appealed; and

20 8h. Any additional information that may be required under the TMC or regulation that is alleged to have been violated.

21 F6. Service of the notice of violation shall be made by:

22 4a. First-class mail to the retail establishment and/or agent on whom the penalty was imposed. Where service of the notice of violation is by mail, service shall be deemed complete upon the third day following the day upon which it is placed in the mail, unless the third day falls on a Saturday, Sunday, or federal legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or



legal holiday following the third day. Service by posting shall be accomplished on the date of the posting in compliance with this section; or

1 2b. Served directly upon an agent of the retail establishment; or

2 3c. Posted on the property. Posting shall mean affixing a copy of the document in a conspicuous place on the
3 property(ies) where the violation occurred, with at least one copy of such document placed at an entryway to
4 the property or structure if an entryway exists.

5 G7. Civil penalties will continue to accrue until the retail establishment comes into compliance with the
6 provisions of this chapter.

7 H8. The retail establishment to which the notice of violation was issued may appeal the notice of violation to
8 the City Hearing Examiner pursuant to the provisions of TMC Chapter 1.23 by filing an appeal with the
9 Department within 21 calendar days following service of the notice of violation.

10 I9. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

11 J10. Each violation of this chapter shall be considered a separate violation.

12 K11. Payment of a monetary penalty imposed pursuant to this chapter does not relieve a person of the duty
13 to correct the violation as ordered by the code enforcement officer.

14 L12. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in
15 this chapter shall preclude the City from pursuing any other remedies provided by law.

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