ORDINANCE O-4477

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO REGULATING THE PROVISION OF SINGLE-USE CARRYOUT BAGS BY RETAIL ESTABLISHMENTS.

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 conserve and protect resources, reduce waste, litter, marine litter and pollution and to protect public health and welfare; and

WHEREAS, having a shoreline abutting Lake Washington, the Kirkland community is particularly aware of, and concerned by, discarded plastic wastes along its beaches and shorelines and in the general freshwater and marine environment; and

WHEREAS, the post-consumer environmental effects of disposable plastic carryout bags are detrimental to marine life, wildlife, and public health; and

WHEREAS, less reliance on disposable plastic carryout bags provided by retail establishments works toward the goals of conserving energy and natural resources, while reducing litter and pollution; and

WHEREAS, disposable plastic carryout bags are made from nonrenewable resources and photo-degrade into smaller and smaller particles that become encapsulated into soils or carried into rivers and lakes, Puget Sound and the world’s oceans, posing threats to animal life and the natural food chain; and

WHEREAS, paper carryout bags are made from renewable resources and do not pose the same freshwater and marine litter problems as disposable plastic carryout bags, but nevertheless require
significant resources to manufacture, transport, recycle and dispose of;
and
WHEREAS, costs associated with the use, recycling and disposal of disposable paper and plastic carryout bags in Kirkland creates burdens on the City's solid waste disposal system, including, in the case of disposable plastic carryout bags, machine down time at material recovery facilities and contamination in finished compost; and

WHEREAS, regulating plastic bags and placing a mandatory charge on paper bags will significantly reduce the use of both types of bags; and

WHEREAS, it is in the best interest of the health, safety and welfare of the people of the City of Kirkland that regulations require a pass-through charge on the use of 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 Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code ("KMC") Section 1.12.020 is hereby amended to read as follows:

1.12.020 Definitions.
As used in this chapter, unless a different meaning is plainly required:

(a) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

(b) "Act" means doing or performing something.

(c) "Applicable department director" means the director of the department or his or her designee.

(d) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 12 are specifically excluded from the application of this chapter.

(e) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use
of any land above, at or below ground or water level, and all acts
governed by a city regulation.

(f) "Emergency" means a situation which in the opinion of the
applicable department director requires immediate action to prevent or
eliminate an immediate threat to the health or safety of persons or
property.

(g) "Hearing examiner" means the Kirkland hearing examiner and the
office thereof established pursuant to Chapter 3.34.

(h) "Omission" means a failure to act.

(i) "Person" means any individual, firm, association, partnership,
corporation or any entity, public or private.

(j) "Person responsible for the violation" means any person who is
required by the applicable regulation to comply therewith, or who
commits any act or omission which is a civil violation or causes or
permits a civil violation to occur or remain upon property in the city, and
includes but is not limited to owner(s), lessor(s), tenant(s), or other
person(s) entitled to control, use and/or occupy property where a civil
violation occurs. For violations of the city sign regulations, this definition
includes, but is not limited to, sign installers/posters, sign owners, and
any other persons who cause or participate in the placement of a sign
in a manner that constitutes a civil violation. For violations of city tree
regulations, this definition includes any person who caused or
participated in the removal of a tree in a manner that constitutes a civil
violation.

(k) "Regulation" means and includes the following, as they now exist
or are hereafter amended:

1. Title 23 (Kirkland Zoning Code);
2. Title 21, Buildings and Construction (including codes adopted by
reference);
3. Chapter 15.52 (Surface Water Management);
4. Title 29 (Land Surface Modification);
5. Chapter 19.04 (Obstructing Streets or Sidewalks);
6. Chapter 11.76 (Junk Vehicles);
7. Chapter 11.24 (Nuisances);
(8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;
(9) Chapter 7.74 (Fair Housing Regulations);
(10) Chapter 16.05 (Retail Carryout Bags, including definitions set forth in KMC Chapter 16.04);
(11) Chapter 16.08 (Garbage Disposal).

"Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

"Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 2. A new Section 16.04.045 of the Kirkland Municipal Code ("KMC") is hereby adopted to read as follows:

16.04.045 Carryout bag.

"Carryout bag" means a 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 the purpose of transporting food, goods or merchandise out of the establishment. Carryout bags do not include: (1) bags used by customers inside stores to package bulk items such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items, such as nails and bolts, or to contain or wrap frozen foods, meat or fish, whether prepackaged or not, or to contain or wrap flowers, or other items where dampness may be a problem; (2) bags to contain unwrapped prepared foods or bakery goods, or to contain prescription drugs; (3) bags to safeguard public health and safety during the transportation of prepared take-out foods intended for consumption away from the retail establishment; or (4) newspaper bags, door-hanger bags, laundry/dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags.

Section 3. A new Section 16.04.085 of the KMC is hereby adopted to read as follows:

16.04.085 Disposable plastic carryout bag.

"Disposable plastic carryout bag" means any carryout bag made from plastic or bioplastic, including materials marketed or labeled
“biodegradable” or “compostable,” that is not a reusable bag as defined in this chapter.

**Section 4.** A new Section 16.04.126 of the KMC is hereby adopted to read as follows:

16.04.126 Pass-through charge.

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

**Section 5.** A new Section 16.04.127 of the KMC is hereby adopted to read as follows:

16.04.127 Recyclable paper bag

"Recyclable paper bag" means a paper carryout bag that meets the following requirements: (1) contains a minimum average of 40 percent post-consumer recycled materials; (2) the paper carryout bag is accepted for recycling in the City’s recycling and composting program; and (3) displays the minimum percent of post-consumer content on the outside of the bag.

**Section 6.** A new Section 16.04.143 of the KMC is hereby adopted to read as follows:

16.04.143 Retail establishment.

"Retail establishment" means any person, corporation, partnership, business venture, public sports or entertainment facility, government agency, street vendor or vendor at public events or festivals or organization that sells or provides 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 department stores, clothing stores, jewelry stores, grocery stores, pharmacies, home improvement 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, food assistance programs and organizations providing services specifically for low-income households are not considered to be retail establishments for purposes of KMC Chapter 16.05 until March 1, 2017.

**Section 7.** A new Section 16.04.146 of the KMC is hereby adopted to read as follows:
16.04.146 Reusable bag.

"Reusable bag" means a bag made of cloth, fabric 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 the purposes of this section, means the capability of loading, carrying and unloading a minimum of 22 pounds over a distance of at least 175 feet a minimum of 125 times; and

2. Is machine washable.

Section 8. A new Section 16.04.240 of the KMC is hereby adopted to read as follows:

16.04.240 Administrative rulemaking.

The Director of Public Works shall have the authority to adopt written rules that supplement and provide further detail with respect to the definitions in KMC Sections 16.04.045, 16.04.085, 16.04.126, 16.04.127, 16.04.143 and 16.04.146. The rulemaking authority of the Director of Public Works shall, among other things, clarify City enforcement priorities in response to changing conditions and new developments with respect to single-use carryout bags.

Section 9. A new Chapter 16.05 of the KMC entitled "Retail Carryout Bags" is hereby adopted to read as follows:

16.05.010 Prohibition on disposable plastic carryout bags.

No retail establishment in the City, or any of its employees, agents, managers or owners, shall provide a disposable plastic carryout bag to any customer.

16.05.020 Recycled paper bag pass-through charge.

(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 bag. All retail establishments in the City shall collect a pass-through charge of not less than $0.05 for each recyclable paper carryout bag provided to customers that has a manufacturer's stated capacity of one-eighth barrel (882 cubic inches) or larger. It shall be a violation of this section for any retail establishment to pay or otherwise reimburse a customers for any portion of the pass-through charge; provided, that the retail establishments shall not charge or 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 federal Supplemental Nutrition
Assistance Program (SNAP, also known as Basic Food), or the Washington State Food Assistance Program (FAP).

(b) All retail establishments shall indicate on the customer transaction receipt the number of recyclable paper carryout bags provided and the amount of the pass-through charge.

(c) Prior to the effective date of this ordinance, retail establishments may voluntarily implement the restrictions on retail carryout bags allowed, as described herein, and may concurrently implement a pass-through charge.

(d) Notwithstanding the requirements in Section 16.05.020(a), nothing in this ordinance shall restrict retail establishments from providing a discount to customers who use reusable bags.

16.05.030 Enforcement and penalties.

(a) Upon determination that there has been a violation of any provision of this chapter, the city may pursue code enforcement and penalties in accordance with the provisions of KMC Chapter 1.12, Code Enforcement.

(b) Any person may request a temporary waiver from the requirements of the chapter by filing a request with the Director of Public Works or designee. The Director of Public Works or designee may waive any specific requirement of this chapter for a period of up to 12 months if the person seeking the waiver has shown that strict application of the specific requirement would create an undue hardship, practical difficulty or other material concern not generally applicable to other persons or retail establishments in similar circumstances. The Director of Public Works or designee’s decision to grant or deny a waiver shall be in writing, shall be final and not subject to appeal.

16.05.040 No conflict with federal or state laws.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 10. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 11. This Ordinance shall be in force and effect on March 1, 2016, after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.
Passed by majority vote of the Kirkland City Council in open meeting this 17th day of February, 2015.

Signed in authentication thereof this 17th day of February, 2015.

[Signature]
MAYOR

Attest:

[Signature]
City Clerk

Approved as to Form:

[Signature]
City Attorney