

Model Ordinance Requiring a \$0.10 Charge on Disposable Carryout Bags¹

AN ORDINANCE of the [insert name of jurisdiction]

AMENDING [if ordinance is amended prior legislation, insert reference]

Section 1. Findings and Purpose

It is the purpose of this ordinance to protect the public health and safety and implement [inset relevant plans or goals of the jurisdiction, if any].

The [insert relevant legislative body] finds as follows:

- a) The [jurisdiction], through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be landfilled by emphasizing waste prevention efforts;
- b) That the use of single-use disposable bags has severe impacts on the environment on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation;
- c) Despite recycling and voluntary solutions to control pollution from disposable carryout bags, many disposable single-use bags ultimately are disposed of in landfills, litter the environment, block storm drains and endanger wildlife;
- d) [Name of jurisdiction] consumers use approximately xxx million disposable carryout bags from stores each year; and
- e) The [jurisdiction]'s taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter and wildlife.

The disposable bag fee is necessary to address the environmental problems associated with disposable bags and to relieve [jurisdiction] taxpayers of the costs imposed upon the [jurisdiction] associated with the use of disposable bags. The [relevant legislative body] intends that the requirements of this ordinance will assist in offsetting the costs associated with using disposable bags to pay for the mitigation, educational, replacement, and administrative efforts of the [jurisdiction].

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

“Disposable Bag” means a bag that is not a Reusable Bag. “Disposable Bag” does not include:

- 1) A bag without handles used to carry produce, meats, poultry, fish, dairy, dry goods or other non-prepackaged food items to the point of sale within a store or to prevent such food items from coming into direct contact with other purchased items;
- 2) A bag to hold prescription medication dispensed from a pharmacy; or

¹ Based on ordinances in Boulder, CO and Seattle, WA, and on the State of California law regulating single-use carryout bags. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

3) Newspaper bags, door-hanger 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 bags.

“Covered Store” means an establishment engaged in the retail sale of personal, consumer or household items, including but not limited to drug stores, pharmacies, grocery stores, supermarkets, convenience stores, food marts, apparel stores, home center and hardware stores, stationery and office supply stores, and food service establishments located within grocery stores, supermarkets, convenience stores or food marts, that provide carryout bags to customers in which to place purchased items. This term includes food service establishments or restaurants located outside of grocery stores, supermarkets, convenience stores or foodmarts.

“Food Service Establishment” means a place where prepared food is provided for individual portion service directly to a consumer, whether consumption occurs on or off the premises.

“Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

“Recycled paper bag” means a paper bag that meets all of the following requirements:

- 1) Contains only post-consumer recycled fiber, and fiber from sources accredited by the Forest Stewardship Council or other independent certification organization, as approved by the [relevant official].
- 2) Contains a minimum of 40% post-consumer recycled content. The [relevant department] may modify the requirements for recycled content by regulation adopted after a public hearing and at least 60 days’ notice, based upon environmental benefit, cost, and market availability.
- 3) Displays the word “Recyclable” in a highly visible manner on the outside of the bag, and is labeled with the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of post-consumer recycled content in an easy-to-read size font.
- 4) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the [jurisdiction].

“Reusable Bag” means a bag with stitched handles that is specifically designed and manufactured for multiple reuse, has a volume capacity of at least 15 liters, is machine washable or made from a material capable of being washed so as to be cleaned and disinfected at least 100 times. A reusable carryout bag is either:

- 1) Made of cloth or other machine washable material, but not film plastic; or
- 2) Made of durable plastic made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material, that is capable of carrying 25 pounds over a distance of 300 feet for a minimum of 125 uses and at least 4 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13. Reusable bags made of

plastic must contain 40 percent minimum postconsumer recycled material, be recyclable in this [jurisdiction], and accepted for return to at-store recycling programs.

Reusable bags provided to customers pursuant to this ordinance shall be conspicuously labeled as reusable, and will not contain lead, cadmium, or any other toxic material that may pose a threat to public health.

“Disposable Bag Fee” means a fee imposed and required to be paid by each customer for each Disposable Bag used during the purchase assessed for the purpose of mitigating the impacts of Disposable Bags.

“Compostable” means that the product fully breaks down into a stable product due to the action of bacteria in a controlled, aerobic commercial process that results in a material safe and desirable as a soil amendment. Compostable materials must be found to degrade satisfactorily at the composting facility receiving the material.

Section 3. Carryout Bag Fee and Additional Obligations of Covered Stores

- a) For each Disposable Bag provided to a customer, Covered Stores shall collect from customers, and customers shall pay, at the time of purchase, a Disposable Bag Fee of \$0.10.
- b) Covered Stores shall record the number of Disposable Bags provided and the total amount of Disposable Bag Fees charged on the customer transaction receipt.
- c) A Covered Store shall not refund to the customer any part of the Disposable Bag Fee, nor shall the Covered Store advertise or state to customers that any part of the Disposable Bag Fee will be refunded to the customer.
- d) A Covered Store shall not exempt any customer from any part of the Disposable Bag Fee for any reason except as stated in Section 6.
- e) No Covered Store shall charge a fee for, or prevent a customer from using, a carryout bag brought by the customer to such store to carry purchased goods from such store. A Covered Store shall not require a customer to use, purchase, or accept a carryout bag, recycled paper bag, or reusable bag as a condition of sale of any product.
- f) No Covered Store shall provide any paper bag that is not a Recycled Paper Bag.
- g) No film bag that a Covered Store provides to customers to bag products in-store, 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. Disposable bags made of noncompostable plastic shall not be tinted green or brown. Any film bags meeting the definition of compostable that retail establishments provide to customers for food or other products, such as vegetables or bulk items 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.” Compostable bags must be separable from solid waste by the generator or during collection for the purpose of composting in [name of jurisdiction].

Section 4. Retention, Remittance, and Transfer of the Disposable Bag Fee

- a) A Covered Store may retain 40 percent of each Disposable Bag Fee collected, which is the “Retained Percent.”
- b) The Retained Percent may only be used by the Covered Store to:
- 1) Provide educational information about the Disposable Bag Fee to customers;
 - 2) Provide the signage required by Section 5;
 - 3) Train staff in the implementation and administration of the fee;
 - 4) Improve or alter infrastructure to allow for the implementation, collection, administration of the fee;
 - 5) Collect, account for and remit the fee to the [jurisdiction];
 - 6) Develop and display informational signage to inform consumers about the fee, encourage the use of reusable bags or promote recycling of plastic bags; and
 - 7) Improve infrastructure to increase plastic bag recycling.
- c) The Retained Percent shall not be classified as revenue for the purposes of calculating sales tax.
- d) The amount of the Disposable Bag Fee collected by a Covered Store in excess of the Retained Percent shall be paid to the [jurisdiction] and shall be used only as set forth in subsection (g) to mitigate the effects of Disposable Bags in [name of jurisdiction].
- e) A Covered Store shall pay and the [jurisdiction] shall collect all Disposable Bag Fees. The [jurisdiction] shall provide the necessary forms for Covered Stores to file with the [jurisdiction], to demonstrate compliance with the provisions of this ordinance.
- 1) If payment of any amount to the [jurisdiction] is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due as described in Section 7.
- f) The Disposable Bag Fee shall be administered by the [relevant official]. The [relevant official] is authorized to adopt interpretive rules to implement this ordinance, prescribe forms and provide methods of payment and collection and otherwise implement requirements of this ordinance.
- g) Funds from the Disposable Bag Fee shall be used only for the expenditures that are intended to mitigate the effects of Disposable Bags, including without limitation the following:
- 1) Administrative costs associated with developing and implementing the Disposable Bag Fee.
 - 2) Activities of the [jurisdiction] to:
 - A) Provide reusable carryout bags to residents and visitors;
 - B) Educate residents, businesses, and visitors about the impact of Disposable Bags on the [jurisdiction]’s environmental health, the importance of reducing the number of single-use carryout bags entering the waste stream, and the expenses associated with mitigating the effects of single-use bags on the [jurisdiction]’s drainage system, transportation system, wildlife and environment;
 - C) Fund programs and infrastructure that allow the [name of jurisdiction] community to reduce waste associated with Disposable Bags;

- D) Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles associated with Disposable Bags;
- E) Fund community cleanup events and other activities that reduce trash associated with Disposable Bags;
- F) Mitigate the effects of Disposable Bags on the [jurisdiction]'s drainage system, transportation system, wildlife and environment;
- G) Maintain a public website that educates residents on the progress of waste reduction efforts associated with Disposable Bags; and
- H) Fund the administration of the Disposable Bag Fee program.

h) No Disposable Bag Fees collected in accordance with this ordinance shall be used only for general government purposes.

i) Disposable Bag Fees collected in accordance with this ordinance shall be continually available for the uses and purposes set forth in subsection (g) of this section without regard to fiscal year limitation. No Disposable Bag Fee funds shall be used for any purpose not authorized in this ordinance.

SECTION 5. Outreach and Implementation

Every Covered Store subject to the collection of the Disposable Bag Fee shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers to the Disposable Bag Fee.

The [relevant department]'s responsibilities for implementing this ordinance include conducting outreach to Covered Store, providing multi-lingual information to educate store employees and customers, and making available lists of vendors who sell recycled paper, or reusable bags. The [relevant official], after a public hearing, may adopt and may amend guidelines, rules, regulations and forms to implement this ordinance.

To further promote the use of reusable shopping bags and reduce the quantity of disposable single-use carryout bags entering the [jurisdiction]'s waste stream, the [relevant department] is authorized to make reusable carryout bags available to the public at low cost or free-of-charge, targeting such programs to reach low-income households to the greatest degree possible.

SECTION 6. Exemptions

A Covered Store may provide a Disposable Bag to a customer at no charge if the customer provides evidence that he or she is a participant in a federal or state Food Assistance Program. A Covered Store shall not charge for a reusable bag that is distributed to a customer without charge during a limited duration promotional event, not to exceed 12 days per year.

SECTION 7. Audits and Violations

a) The [jurisdiction] attorney, acting on behalf of the people of the [jurisdiction], may prosecute any violation of this ordinance in municipal court in the same manner that other municipal offenses are prosecuted.

b) The maximum penalty for a first or second conviction within two years, based on date of violation of this section, is a fine of \$500.00. For a third and each subsequent conviction within two years, based

upon the date of the first violation, the general penalty provisions of [insert reference to pertinent code], shall apply.

c) Each Covered Store licensed pursuant to the provisions of this ordinance shall maintain accurate and complete records of the Disposable Bag Fees collected, the number of Disposable Bags provided to customers, the form and recipients of any notice required pursuant to this ordinance, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each Covered Store to keep and preserve all such documents and records, including any electronic information, for a period of three years from the end of the calendar year of such records.

f) If requested, each Covered Store shall make its records available for audit by the [relevant official] during regular business hours for the [jurisdiction] to verify compliance with the provisions of this ordinance. All such information shall be treated as confidential commercial documents.

e) If any person fails, neglects, or refuses to collect the Disposable Bag Fee, or underpays the Disposable Bag Fee, the [relevant official] shall make an estimate of the fees due, based on available information, and shall add thereto penalties, interest, and any additions to the fees. The [relevant official] shall serve upon the delinquent Covered Store personally, by electronic mail or by first class mail directed to the last address of the Covered Store on file with the [jurisdiction], written notice of such estimated fees, penalties, and interest, constituting a Notice of Final Determination, Assessment, and Demand for Payment, (also referred to as “Notice of Final Determination”) due and payable within 20 calendar days after the date of the notice. The Covered Store may request a hearing on the assessment as provided in Section 8.

f) If payment of any amount of the Disposable Bag Fee to the [jurisdiction] is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:

- 1) A penalty of ten percent of total due;
- 2) Interest charge of one percent of total penalty per month.

SECTION 8. Hearings

a) A Covered Store may request a hearing on any proposed fee imposed under this title after receiving a Notice of Final Determination, by filing a written request for hearing within 20 calendar days of the date of mailing of the Notice of Final Determination. The request for hearing shall set forth the reasons for and amount of changes in the Notice of Final Determination that the Covered Store seeks and such other information as the [relevant official] may prescribe.

b) The [relevant official] shall conduct the hearing under the procedures prescribed by [insert reference to pertinent code], except that the [relevant official] shall notify the Covered Store in writing of the time and place of the hearing at least ten days before it is scheduled, unless the Covered Store agrees to a shorter time. The hearing shall be held within 60 days of the date of receipt of the request for a hearing, unless the Covered Store agrees to a later date.

SECTION 9. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be

considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.

SECTION 10. Effective Date

The provisions of this ordinance relating to the collection of the Disposable Bag Fee and required store signage shall become effective [Month date, year]. All other provisions shall be effective 30 days from the date of passage. The [relevant official] shall develop and implement the administrative and financial processes for the collection of the fee between the effective date of this ordinance and [Month date, year].

In the event that compliance with the effective date of this ordinance is not feasible for a Covered Store because of economic hardship, the [relevant department] may grant a waiver of not more than six months upon application of the owner or the owner's representative.