

# Model Ordinance Requiring a \$0.05 Charge on Disposable Carryout Bags<sup>1</sup>

## AN ORDINANCE of the [insert name of jurisdiction]

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

#### Section 1. Findings and Purpose

A. The [insert relevant legislative body] hereby finds and determines that data released by the United States Environmental Protection Agency shows that between 500 billion and one trillion plastic bags are consumed worldwide each year. The [relevant legislative body] further finds and determines that most plastic bags do not biodegrade; over time, the bags break down into smaller, more toxic petro-polymers which eventually contaminate soils and waterways. The [relevant legislative body] further finds that it is estimated that plastic bags account for over 10% of debris that washes up on our nation's coastlines. The [relevant legislative body] also finds that plastic bags can have a devastating effect on wildlife; birds can become entangled in the bags and different species of sea life can die from ingesting plastic bags which they mistake for food. The [relevant legislative body] further finds that plastic shopping bags are made from polyethylene, a thermoplastic made from oil. Accordingly, reducing the use of plastic bags will decrease our dependence on fossil fuels. The [relevant legislative body] finds that only 5% to 7% of plastic bags are recycled, in part due to the fact that it costs more to recycle a bag than to produce a new one. The [relevant legislative body] further finds that Americans consume more than 10 billion paper bags each year and 14 million trees are cut down yearly for the manufacturing of paper. The [relevant legislative body] also finds that paper production requires large amounts of water, energy, and chemicals and can emit toxic and hazardous chemicals into the air and water. The [relevant legislative body] further finds that the nation's paper industry generates more than 12 million tons of solid waste every year. The [relevant legislative body] finds that studies indicate that fees on carryout bags are effective in reducing the proliferation of paper and plastic bags and protecting the environment. The [relevant legislative body] concludes that in lieu of enacting a total ban of plastic bags, the [name of jurisdiction] should instead require stores to charge a fee of \$0.05 on all carryout bags. If this approach fails to reduce the use of plastic bags by at least 75% in three years, the idea of an outright ban can be revisited at a later date.

B. Therefore, the purpose of this ordinance is to encourage consumers in [name of jurisdiction] to use their own reusable bags for shopping by requiring not less than a charge of \$0.05 on carryout bags that are provided at retail stores.

#### Section 2. Definitions

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

**CARRYOUT BAG** — Any bag that is provided by a covered store to a customer at the point of sale and is used to carry goods from such store; provided, however, that such term shall not include any of the following:

A. 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 covered store or to prevent such food items from coming into direct contact with other purchased items;

---

<sup>1</sup> Based on ordinances in Suffolk County, NY 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.**

- B. A bag to hold prescription medication dispensed from a pharmacy;
- C. A nonhandled bag that is designed to be placed over articles of clothing on a hanger; or
- D. Any other bag exempted from the provisions of this ordinance.

**COVERED STORE** — 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** — A place where prepared food is provided for individual portion service directly to a consumer, whether consumption occurs on or off the premises.

**RETAIL SALES** — The transfer to a customer of goods in exchange for payment occurring in retail stores, sidewalk sales, farmers' markets and flea markets. The term "retail sales" does not include sales of goods at yard sales, tag sales, and other sales by residents at their homes.

**REUSABLE CARRYOUT BAG** — 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 carryout 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.

**POSTCONSUMER RECYCLED MATERIAL** — 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** — A paper carryout bag provided by a store to a customer at the point of sale 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) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the [jurisdiction].

COMPOSTALBE – A material that 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

A. Covered stores shall charge a fee of not less than \$0.05 for each carryout bag provided to any customer. All fees collected by a covered store under this ordinance shall be retained by the store.<sup>2</sup> Covered stores shall separately itemize the fee charged pursuant to this ordinance on the standard receipt provided to customers.

B. A covered store shall not refund to the customer any part of the disposable bag fee, nor shall the store advertise or state to customers that any part of the fee will be refunded to the customer.

C. 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 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.

D. Paper carryout bags provided by covered stores to customers shall contain a minimum of 40% post-consumer recycled content and be conspicuously labeled with the word “Recyclable” and the amount of post-consumer recycled content in a highly visible manner on the outside of the bag.

E. 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].

F. 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. A store may provide a reusable bag or a recycled paper bag at no cost at the point of sale to a customer receiving [supplemental food assistance, WIC and other public assistance programs, as applicable in relevant state/jurisdiction].

---

<sup>2</sup> In some states, local governments are not permitted to collect moneys from charges on single-use carryout bags. Others choose not to collect the moneys to avoid complaints that the fee is a tax. To cover such situations for the purposes of this model, we have used language that allows stores to retain the full amount. In other states, governments collect all or a portion of the moneys generated by the charge. In these cases, the moneys are used to mitigate the impacts of disposable bags, or for other environmental programs. See “Model Fee on Disposable Bags – 10 cents” for sample language.

## Section 4. Reporting

No later than [Month date, year], and annually thereafter, the [relevant official], and the head of any other department or office designated by [relevant legislative body], shall prepare an annual recycling report that includes information on the progress of single-use carryout bag reduction, including, but not limited to:

- A. The general effectiveness of this ordinance in reducing the use of single-use carryout bags in the [jurisdiction] and increasing the use of reusable carryout bags;
- B. The waste- and litter-reduction benefits of this ordinance, including, where practicable, the amount of single-use plastic bags in the waste stream;
- C. The number of notices of violation issued pursuant to this ordinance; and
- D. Any cost savings for the [jurisdiction] attributable to single-use carryout bag reduction, such as reduced contamination of local waterways or reduction in flooding or combined sewer overflows.

## SECTION 5. Deduction from Employee Wages Prohibited

Covered stores are prohibited from making a charge against, or deduction from, the wages of an employee to offset any penalty addressed against the covered store pursuant to this ordinance. It shall be a violation of this ordinance for any store to penalize, discipline, or discriminate against any employee for performing any duty necessary to comply with the ordinance.

## SECTION 6. Outreach and Implementation

Every 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 stores, 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 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 7. Enforcement and Penalties

This ordinance shall be enforced by the [relevant department] in accordance with the provisions of [insert reference to pertinent code]. The [relevant official] is hereby authorized and empowered to promulgate rules and regulations necessary to enforce this ordinance.

Any violation of this ordinance shall be punishable by a civil fine of \$500 for each.

## SECTION 8. Reverse Preemption

This ordinance shall be null and void on the day that statewide or federal legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this ordinance, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations

preempting such action by the [name of jurisdiction]. The [relevant legislative body] may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

#### 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

This ordinance shall take effect on [Month date, year]. In the event that compliance with the effective date of this ordinance is not feasible for a 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.