

# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 690

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, ADOPTING A NEW CHAPTER 8.56, RESTRICTING THE USE AND SALE OF SINGLE-USE CARRYOUT PLASTIC BAGS IN THE CITY OF BURIEN, PROVIDING PENALTIES FOR VIOLATIONS, FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

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**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**, the City of Burien (the "City") has a duty to protect the natural environment, the economy, and the health of its citizens; and

**WHEREAS**, the Burien City Council finds that a reduction in plastic bag use is in the best interest of public health, safety, and welfare for the citizens of Burien and the environment; and

**WHEREAS**, single-use plastic carryout bags are made of nonrenewable resources which never biodegrade, and break down into smaller particles that seep into soils or are carried into rivers, lakes, Puget Sound, and the ocean, posing a threat to animal life; and

**WHEREAS**, costs associated with the use and disposal of single-use plastic carryout bags create a burden on the City's solid waste disposal system and clog stormwater drains; and

**WHEREAS**, to prevent waste generation in the City, it is in the City's interest to discourage single-use plastic carryout bags, and, to do so, it is necessary to regulate such use; and

**WHEREAS**, alternatives to single-use plastic carryout bags are readily available; and

**WHEREAS**, the City of Burien shall work with retailers, retail associations, and other organizations to provide educational resources about the benefits of reusable bags. All retail establishments are strongly encouraged to educate their staff to promote reusable bags as the best option for carryout bags and to post signs encouraging customers to use reusable bags; and

**WHEREAS**, the City Council finds and declares that to protect the City's unique environment and the health and welfare of its aquatic and avian life and its people, plastic single-use bags must be regulated;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. New Chapter Adopted. Chapter 8.56 of the Burien Municipal Code, entitled RESTRICTING THE USE AND SALE OF SINGLE-USE PLASTIC BAGS is hereby adopted to read as follows:

#### Chapter 8.56

#### RESTRICTING THE USE AND SALE OF SINGLE-USE PLASTIC BAGS

##### Sections:

- 8.56.010 Definitions.
- 8.56.020 Purpose.
- 8.56.030 Prohibitions on plastic carryout bags.
- 8.56.040 Types of bags permitted at retail establishments.
- 8.56.050 Recycled content paper bag pass-through charge.
- 8.56.060 Exemptions.
- 8.56.070 Extensions.
- 8.56.080 Violation and penalties.
- 8.56.090 No conflict with federal or state laws.

#### **8.56.010 Definitions.**

Whenever used in this chapter, unless the context otherwise requires:

A. "ASTM Standard" means the American Society for Testing and Materials (ASTM) International Standard.

B. "Carryout Bag" means a bag that is provided by a Retail Establishment for home delivery or at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment.

Carryout Bags do not include:

1. Bags used by consumers inside stores to package bulk items, such as fruit, vegetables, nuts, or grains; 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 recycled content paper bag or reusable bag, or
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.

C. "Compostable" means that the product completely breaks down into a stable product due to the 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 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.

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

E. "Recyclable" means used or waste materials that can be treated or processed to be made suitable for reuse, whether in their original form or with minimal alterations. For the purposes of this chapter, recyclable materials do not include polystyrene.

F. "Recycled Content Paper Bag" or "Recycled Content Paper Carryout Bag" means a paper bag provided by a store to a customer at the point-of-sale that meets all of the following requirements: (1) contains no old growth fiber; (2) contains a minimum of 40% postconsumer recycled materials; (3) is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City; (4) is capable of composting, consistent with the timeline and specifications of the ASTM Standard D6400, as published in Master Environmental Assessment on Single Use and Reusable Bags, March 2010; and (5) displays the minimum percentage of postconsumer content, manufacturer, and the word "recyclable" on the outside of the bag.

G. "Retail Establishment" means any person, corporation, partnership, business, facility, vendor, 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 consumer; retail establishment includes, by way of example and not limitation, any grocery store, department store, hardware store, pharmacy, liquor store, restaurant, catering truck, home delivery, convenience store, and any other retail store or vendor, including temporary ones at farmers markets, street fairs, and festivals.

H. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for at least 125 uses and is capable of carrying 22 pounds 175 feet, and is made of cloth or other machine washable fabric.

I. "Single-Use Plastic Carryout Bag" means any carryout bag made from plastic that is neither intended nor suitable for continuous reuse as a carryout bag unless that bag meets the qualifications for a compostable bag.

#### **8.56.020 Purpose.**

The purpose of this chapter is to promote public health, reduce litter, and limit harmful materials entering the environment by the regulation and limiting of the use of SingleUse Plastic Carryout Bags; and to encourage the use of environmentally preferred alternatives.

#### **8.56.030 Prohibition on plastic carryout bags.**

No Retail Establishment in the City, or any of its employees, agents, managers or owners, shall provide a single-use plastic carryout bag to any customer.

#### **8.56.040 Types of Bags permitted at Retail Establishments.**

A. All Retail Establishments within the City of Burien shall provide only the following as Carryout Bags to customers: Reusable Bags, Recycled Content Paper Bags, or Compostable Bags.

B. Nothing in this chapter shall be read to preclude Retail Establishments from making Reusable Bags or Compostable Bags available for sale to customers or from giving them out free of charge.

#### **8.56.050 Recycled Content paper bag pass-through charge.**

A. Retail Establishments may provide a customer a Recycled Content Paper Bag upon request but shall charge the customer a reasonable pass-through charge of not less than 10 (ten) cents per bag provided.

B. Prior to the effective date of this ordinance, Retail Establishments may voluntarily implement the restrictions on carryout bags allowed, as described herein, and may concurrently implement a pass-through charge.

C. Notwithstanding the requirements in Section 8.56.050(A), nothing in this ordinance shall restrict Retail Establishments from providing a discount to customers who use reusable bags.

#### **8.56.060 Exemptions.**

A. A Retail Establishment 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, but are encouraged to explore opportunities to comply.

#### **8.56.070 Extensions.**

The City Manager, or his or her designee, may extend the deadline for a Retail Establishment to comply with the requirements of this chapter for a period of up to one year after the operative date of this chapter, upon sufficient showing by the applicant that the provisions of this chapter would cause undue hardship. This request must be submitted in writing to the City Manager within 30 days of the effective date of this chapter.

#### **8.56.080 Violation and penalties.**

A. Violations of this chapter may be enforced using the procedures set forth for civil infractions in Chapter 1.15 BMC. Liability for violations of this chapter shall be the responsibility of the owner of the Retail Establishment.

B. The remedies and penalties provided in this chapter are cumulative and not exclusive.

C. 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 ordinance.

#### **8.36.090 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 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force on January 1, 2020

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN,  
WASHINGTON, AT A REGULAR MEETING THEREOF THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, \_\_\_\_.

CITY OF BURIEN

Jimmy Matta, Mayor

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ATTEST/AUTHENTICATED:

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Monica Lusk, City Clerk

Approved as to form:

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Lisa Marshall, City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No.:  
Date of Publication: