

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE ESTABLISHING
A NEW ARTICLE 19, CHAPTER 22, KAUAI COUNTY CODE 1987,
RELATING TO PLASTIC BAG REDUCTION

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The production and use of plastic checkout bags have significant impacts on the environment, including, but not limited to: contributing to unsightly litter; creating an additional burden on the landfill; contributing to potential death of marine animals through ingestion and entanglement; and requiring the use of millions of barrels of crude oil for their manufacture.

The Council of the County of Kauai finds and declares that to preserve the health, safety, welfare and scenic beauty of Kauai, the distribution of plastic bags should be regulated and prohibited.

The purpose of this legislation is to encourage customers to bring their own reusable bags when shopping. If the customer forgets to bring their own bag, or chooses not to, this ordinance does not prevent the retail establishment from providing recyclable bags for sale. This effort will lessen the negative impact on our environment caused by plastic shopping bags. Produce bags in grocery stores will still be permissible.

SECTION 2. Chapter 22, Kauai County Code 1987, is hereby amended by adding a new Article 19 to be appropriately designated and to read as follows:

"ARTICLE 19. PLASTIC BAG REDUCTION

Sec. 22-19.1 Definitions.

As used in this Article, unless the content clearly requires otherwise:

"Biodegradable Bag" means a bag that is intended for single use and will decompose in a natural setting at a rate comparable to other biodegradable materials such as paper, leaves and food waste. When placed in a landfill it will decompose at the same rate as other biodegradable materials.

“Checkout Bag” means a bag that is provided by a retail establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout bags does not include bags provided solely for produce, bulk food, or meat at a produce, bulk food or meat department within a grocery store, supermarket, produce or meat market or other similar retail establishment.

“Recyclable Paper Bag” means a bag that meets all the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled content; and (3) displays the words “Reusable” and “Recyclable” in a highly visible manner on the outside of the bag.

“Retail Establishment” means any commercial business facility that sells goods directly to the ultimate consumer, including, but not limited to, grocery stores, pharmacies, liquor stores, “mini-marts,” and retail stores and vendors selling clothing, food and personal items.

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine washable fabric and/or is made of a durable material at least 2.25 millimeters thick and suitable for reuse.

Sec. 22-19.2 Mandatory Use of Recyclable Checkout Bags.

(a) All retail establishments shall provide only the following as checkout bags to customers: recyclable paper bags, biodegradable bags and/or reusable bags.

(b) Nothing in this ordinance shall preclude any retail establishment from offering checkout bags for sale to customers.

Sec. 22-19.3 Enforcement and Penalties.

(a) Any person who violates this Article shall be subject to civil penalties as follows: (1) \$100.00 for the first violation, (2) \$200.00 for the second violation within the same year, and \$500.00 for each additional violation in the same year. Each occurrence of a violation, and each day that such violation continues, shall constitute a separate violation and shall be subject to a separate fine and may be cited as such.

(b) The County Engineer or designee will have primary responsibility for enforcement of this Article. The County Engineer or designee is authorized to promulgate regulations and to take any and all other actions reasonably necessary to enforce this Article, including, but not limited to, entering the premises of any affected Retail Establishment to verify compliance.

(c) The County Attorney may seek legal, injunctive, or other equitable relief to enforce this Article.

Sec. 22-19.4 No Conflict with Federal or State Law.

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

Sec. 22-19.5 Exemptions.

The County Engineer, or his designee, may exempt an entity from the requirements of this chapter for an interim period no longer than eighteen (18) months 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 County. The phrase "undue hardship" may include, but is not limited to, the following:

(a) Situations where there are no acceptable alternatives to plastic shopping bags for reasons which are unique to the entity.

(b) Situations where compliance with the requirements of this article would deprive a person of a legally protected right."

SECTION 3. Severability. If any provision of this Article, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

SECTION 4. This ordinance shall take effect on July 1, 2010.

Introduced by:

TIM BYNUM

LANI T. KAWAHARA

Date of Introduction:

Līhu'e, Kaua'i, Hawai'i