

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Ordinance No. 941 - Repealing Shoreline Municipal Code Chapter 9.25 Retail Carryout Bag Regulations Due to State Preemption		
DEPARTMENT:	Recreation, Cultural and Community Services		
PRESENTED BY:	Autumn Salamack, Environmental Services Coordinator		
ACTION:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

The 2020 Washington State Legislature passed Engrossed Substitute Senate Bill (ESSB) 5323, enacting a statewide ban on single-use plastic bags now codified at Chapter 70A.530 RCW. RCW 70A.530 preempts Shoreline Municipal Code (SMC) Chapter 9.25 Retail Carryout Bag Regulations that were originally enacted in April 2013.

Chapter 70A.530 was to be effective starting January 1, 2021. However, on December 18, 2020, the Washington State Governor issued Proclamation 20-82, delaying implementation of RCW 70A.530 until January 30, 2021 due to the COVID-19 pandemic. The Washington State Legislature, with Senate Concurrent Resolution 8402, extended Proclamation 20-82 until the termination of the COVID-19 state of emergency or until rescinded by gubernatorial or legislative action, whichever occurred first. In July 2021, the Governor established September 30, 2021 at 11:59 pm as the expiration date for Proclamation 20-82. Therefore, the statewide ban on single-use plastic bags set forth in RCW 70A.530 will go into effect on October 1, 2021.

Proposed Ordinance No. 941 (Attachment A) would repeal SMC Chapter 9.25 in its entirety. While this preemption results in SMC Chapter 9.25 having no force and effect, repealing of the Chapter will ensure no confusion in the future as to the applicable law. Tonight, Council is scheduled to discuss this proposed Ordinance. Proposed Ordinance No. 941 is currently scheduled to be brought back to Council for potential adoption on October 18, 2021.

RESOURCE/FINANCIAL IMPACT:

There is no direct significant financial impact of proposed Ordinance No. 941. The new state law increases the required pass-through charge for local retailers that SMC 9.25 has required from the five cents for each recyclable paper carryout bag provided to eight cents for every recycled content paper carryout bag or reusable carryout bag made of film plastic provided. In 2026, that charge increases to twelve cents for reusable carryout bags made of film plastic and eight cents for recycled content paper carryout bags.

RECOMMENDATION

No action is required tonight as this is a discussion item only. Staff recommends that Council discuss proposed Ordinance No. 941 and ask questions of staff. Staff further recommends that Council adopt proposed Ordinance No. 941, repealing SMC Chapter 9.25, to reflect the preemption of RCW 70A.530 when this proposed Ordinance is returned to the Council for potential action on October 18, 2021.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

The 2020 Washington State Legislature passed ESSB 5323, now codified as Chapter 70A.530 Carryout Bags, enacting a statewide ban on single-use plastic bags. The intent of this ban is to reduce pollution by prohibiting single-use plastic carryout bags and charging a fee for acceptable bags in business establishments. RCW 70A.530 was subsequently amended in 2021 to address non-wood renewable fiber in paper carryout bags.

Chapter 70A.530 was to be effective starting January 1, 2021. However, on December 18, 2020, the Washington State Governor issued Proclamation 20-82, delaying implementation of RCW 70A.530 until January 30, 2021 due to the COVID-19 pandemic. The Washington State Legislature, with Senate Concurrent Resolution 8402, extended Proclamation 20-82 until the termination of the COVID-19 state of emergency or until rescinded by gubernatorial or legislative action, whichever occurred first. In July 2021, the Governor established September 30, 2021 at 11:59 pm as the expiration date for Proclamation 20-82. Therefore, the statewide ban on single-use plastic bags set forth in RCW 70A.530 will go into effect on October 1, 2021. It should also be noted that the Department of Ecology website for the statewide ban on single-use plastic bags currently notes this effective date of October 1, 2021. City staff has not received any communications from Ecology regarding any further delays for implementation, and believe that this legislation will become effective at that time.

DISCUSSION

RCW 70A.530 contains language that expressly preempts implementation of a local carryout bag ordinance such as [Shoreline Municipal Code \(SMC\) Chapter 9.25](#). This Code section provides the carryout bag regulations that were enacted in April 2013 with the adoption of [Ordinance No. 653](#). While this preemption results in SMC Chapter 9.25 having no force and effect, repealing of the Chapter will ensure no confusion in the future as to the applicable law. Proposed Ordinance No. 941 (Attachment A) would provide for this repeal of SMC Chapter 9.25.

The one exception provided by the Legislature in RCW 70A.530 is if the local ordinance established a pass-through charge of 10 cents. In that case, that charge could continue until 2026. SMC Chapter 9.25 establishes a pass-through charge of not less than 5 cents, so this exception is not applicable.

Content of RCW 70A.530

Key changes for local retailers related to the enactment of this new state law are summarized in the Frequently Asked Questions for the 2021 Plastic Bag Ban document (Attachment B). The state Plastic Bag Ban law will:

- Prohibit single-use plastic carryout bags in all retail and grocery stores, restaurants, takeout establishments, festivals, and markets.
- Require an 8-cent pass-through charge for all recycled content paper carryout bags and reusable carryout bags made of film plastic; increasing to 12-cents for plastic bags and 8-cents for paper bags in January 2026; the pass-through charge is a taxable retail sale.

- The fee may not be collected from anyone using a voucher or electronic benefits card issued under the Supplemental Nutrition Assistance Program (SNAP), Women, Infants and Children (WIC), Temporary Assistance for Needy Families (TANF), or Food Assistance Program (FAP).
- Require a minimum of 40 percent post-consumer recycled content and meet composting requirements in all retail-provided paper bags.
- Require that reusable bags made of plastic film contain 20 percent post-consumer recycled content and be at least 2.25 mil thick; increasing to 40 percent consumer recycled content in July 2022 and 4 mils thickness in January 2026.
- Require compliant paper and reusable plastic film bags to be labeled with the above specifications.
- Create consistent policy and fees across the state.
- This ban does not apply to food banks and food assistance programs. However, those programs are encouraged to take actions to reduce the use of single-use plastic carryout bags.
- Authorizes a deduction in business and occupation tax for the income amount derived from the pass-through charge (RCW 82.04.770).

Advisory Vote 32

Advisory Vote 32 was on the 2020 ballot and addressed ESSB 5323, stating that “The legislature imposed, without a vote of the people, a retail sales tax on pass through charges retail establishments collect for specified carryout bags, costing \$32,000,000 in its first ten years, for government spending.” Advisory Vote 32 received a 61.13% vote to repeal ESSB 5323. If the Legislature should consider this advisory vote in the next legislative session, staff believes that there is a low probability that repeal would actually occur. If a repeal were successful, the City would have sufficient time to adopt a new, local ordinance to become effective on the same day as the repeal.

Education & Outreach for Local Retailers and Consumers

RCW 70A.530 authorizes the Washington State Department of Ecology (Ecology) to adopt rules as necessary for the purpose of implementing, administering, and enforcing this new law. Ecology is also required, in collaboration with local governments, to provide educational and outreach materials/activities to inform retail establishments, consumers, and other interested individuals about the requirements of the RCW. Ecology or local governments were also tasked with working with retail establishments, retail associations, unions, and other organizations to create educational elements regarding the ban and benefits of reusable bags. Ecology has established a webpage providing information at: <https://ecology.wa.gov/Waste-Toxics/Reducing-recycling-waste/Waste-reduction-programs/Plastics/Plastic-bag-ban>.

The Department of Revenue began their taxpayer education efforts on the business and occupation tax exemptions for the plastic bag pass-through charge in December 2020 with a special notice

(https://dor.wa.gov/sites/default/files/legacy/Docs/Pubs/SpecialNotices/2020/sn_20_PlasticBags.pdf) linking to the Ecology bag ban website ([Ecology.wa.gov/Bag-Ban](https://ecology.wa.gov/Bag-Ban)), where businesses can learn more and find frequently asked questions.

City staff shared a print notice about the new law with applicable retail outlets listed in the City's database in December 2020 and July 2021. Information was also shared with the Chamber of Commerce, on social media, in the Currents newsletter, in Shoreline Area News and on the City's website, with links to the Ecology website and resources available for retailers.

The Department of Commerce, in consultation with Ecology, is to provide the Legislature with a report on the effectiveness of RCW 70A.530 by December 1, 2024.

COUNCIL GOAL(S) ADDRESSED

This action addresses City Council Goal #2: Continue to deliver highly-valued public services through management of the City's infrastructure and stewardship of the natural environment.

RESOURCE/FINANCIAL IMPACT

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ATTACHMENTS

Attachment A: Proposed Ordinance No. 941

Attachment B: Frequently Asked Questions for the 2021 Plastic Bag Ban

ORDINANCE NO. 941

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,
REPEALING CHAPTER 9.25 RETAIL CARRYOUT BAG
REGULATIONS OF THE SHORELINE MUNICIPAL CODE DUE TO
STATE PREEMPTION**

WHEREAS, in 2013, the City Council adopted Ordinance No. 653, establishing SMC Chapter 9.25 Retail Carryout Bag Regulations, which sets forth regulations for retail carryout bags provided by retail establishments so as to help create an environmentally sustainable community, implement an effective waste reduction strategy, reduce greenhouse gas emissions, waste, litter, marine litter, and pollution, and conserve energy and natural resources; and

WHEREAS, in 2020, the Washington State Legislature adopted Engrossed Substitute Senate Bill 5323, now codified as RCW Chapter 70A.530 Carryout Bags, establishing a state-wide ban on single-use plastic bags effective January 1, 2021; and

WHEREAS, due to the COVID-19 pandemic, on December 18, 2020, the Washington State Governor issued Proclamation 20-82, delaying implementation of RCW 70A.530 until January 30, 2021. The Washington State Legislature, with Senate Concurrent Resolution 8402, subsequently extended Proclamation 20-82 until the termination of the COVID-19 state of emergency or until rescinded by gubernatorial or legislative action, whichever occurred first. In July 2021, the Governor established September 30, 2021 at 11:59 pm as the expiration date for Proclamation 20-82. Therefore, the statewide ban on single-use plastic bags set forth in RCW 70A.530 will go into effect on October 1, 2021; and

WHEREAS, with the enactment of RCW Chapter 70A.530, the State preempted any local government from implementing a local carryout bag ordinance such as SMC Chapter 9.25; and

WHEREAS, while SMC Chapter 9.25 has been rendered ineffective by the State's preemption, repealing this Chapter will ensure there is no confusion as to what regulations retail establishments must follow; and

WHEREAS, the City Council discussed the repeal of SMC Chapter 9.25 at its October 4, 2021 regular meeting and has considered the entire public record, public and stakeholder comments, written and oral; and

WHEREAS, the City Council has determined that the repeal of SMC Chapter 9.25 in its entirety is warranted due to the State's express preemption set forth in RCW 70A.530 and is in the best interests of the City of Shoreline so as to prevent confusion as to the applicable regulations;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Repealer – SMC Chapter 9.25 Retail Carryout Bag Regulations. SMC Chapter 9.25 is repealed in its entirety.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 3. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five (5) days after publication.

PASSED BY THE CITY COUNCIL ON OCTOBER 18, 2021

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie K Ainsworth-Taylor
Assistant City Attorney
on behalf of Margaret King, City Attorney

Date of Publication: _____, 2021
Effective Date: _____, 2021

Washington's 2021 Plastic Bag Ban Frequently Asked Questions

The 2020 Washington State Legislature passed a statewide ban on single-use plastic bags. Washington's Plastic Bag Ban will reduce pollution by prohibiting single-use plastic carryout bags and charging a fee for acceptable bags in business establishments beginning in January 2021. Gov. Jay Inslee and the Legislature delayed implementation of the statewide plastic bag ban due to supply issues caused by the COVID-19 pandemic. This statewide ban on single-use plastic bags is currently scheduled to go into effect on October 1, 2021.

This statewide law ([RCW 70A.530](#)) preempts City [Ordinance No. 653](#), which enacted the carryout bag regulations in the City of Shoreline in April 2013. All applicable businesses must comply with the state law as of October 1, 2021.



Effective October 1, 2021, Washington state will:

- Prohibit single-use plastic carryout bags in all retail and grocery stores, restaurants, takeout establishments, festivals, and markets.
- Require an 8-cent charge for all recycled content paper carryout bags and reusable carryout bags made of film plastic.
- The fee may not be collected from anyone using a voucher or electronic benefits card issued under the Supplemental Nutrition Assistance Program (SNAP), Women, Infants and Children (WIC), Temporary Assistance for Needy Families (TANF), or Food Assistance Program (FAP).
- Require a minimum of 40 percent post-consumer recycled content and meet composting requirements in all retail-provided paper bags.
- Require that a reusable bag made of plastic film contain 20 percent post-consumer recycled content and be at least 2.25 mil thick.

- Require compliant paper and reusable plastic film bags to be labeled with the above specifications
- Create consistent policy and fees across the state.
- This ban does not apply to food banks and food assistance programs. However, those programs are encouraged to take actions to reduce the use of single-use plastic carryout bags.

Additional requirements take effect in the future. Learn more about the new state law and download point of sale infographics and fliers, including materials translated in different languages, at [Ecology.wa.gov/Bag-Ban](https://ecology.wa.gov/Bag-Ban).

Frequently Asked Questions

Who does the ban apply to?

- All retail, grocery, and convenience stores
- Any restaurant or establishment offering take-out or delivery food or goods
- Temporary stores or vendors
- Any event where food or goods are sold or distributed

What kind of bags are banned?

Any single-use, plastic carry-out bag provided at delivery, check stand, cash register, point of sale, or other point of departure to a customer.

What kind of bags are allowed?

- Paper bags made of at least 40% post-consumer recycled content. Paper bags must be labeled with their post-consumer recycled content.
- Plastic bags made of at least 20% post-consumer recycled content made of plastic film at least 2.25 mil thick. These plastic bags must be labeled "Reusable," including post-consumer recycled content.

What laws changed?

The plastic bag ban reenacts and amends [Chapter 43.21B.110 RCW](#). It also adds a new section to [Chapter 82.04 RCW](#). This law is located at [Chapter 70a.530 RCW](#).

What changes should local retailers be aware of?

Washington's Plastic Bag Ban preempts City of Shoreline [Ordinance No. 653](#), which enacted the carryout bag regulations for local retailers in April 2013. Key changes for local retailers include the following, effective October 1, 2021:

- The City ordinance required retailers charge at least five cents (\$0.05) for each 'grocery-sized' paper bag provided to customers. While thick reusable plastic bags were also allowed, no carryout charge was required. The state law requires retailers charge eight cents (\$0.08) for both large paper carryout bags and thick reusable plastic carryout bags.
- The City ordinance did not require recycled content for allowed heavy-weight plastic bags. The state law requires 20% post-consumer recycled content in thick reusable plastic bags until July 1, 2022. Thereafter, those bags must be made from a minimum of 40% post-consumer recycled

content. The percentage of post-consumer recycled content, the millimeter thickness, and "Reusable" text must be displayed in print on the outside of the plastic bag.

- The City ordinance allowed single-use plastic bags for prepared take-out foods and liquids, including to-go food vendors. Single-use plastic bags will not be allowed for take-out foods and liquids aside from small bags that are allowed for moisture control and for produce, meat, bulk foods, bakery goods, etc.
- The City ordinance pertained to retail establishments, defined as “any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides food, merchandise, goods, or materials directly to a customer including home delivery, temporary stores, or vendors at farmers markets, street fairs, and festivals.” The state law applies to the following:
 - All retail, grocery, and convenience stores
 - Any restaurant or establishment offering take-out or delivery food or goods
 - Temporary stores or vendors
 - Any event where food or goods are sold or distributed
- The City ordinance noted that complaints of noncompliant businesses could be submitted to CRT for enforcement. Beginning in October 2021, people will be able to submit a report on the Department of Ecology’s website if they observe a business still using prohibited bags. Department of Ecology staff will use this information to help businesses follow the state's plastic bag ban.
 - *Note:* DOE’s enforcement plan is to follow up on complaints with a letter to the business, informing them of the new requirements and steps necessary to comply. If further complaints are received, DOE staff may work with the local government to reach out to the business owner. The local government also has the right to access and respond with further outreach to complaints within their local jurisdiction if requested.

What carry-out paper bags are allowed?

The bag ban allows large paper carry-out bags, which are required to be 1/8 barrel paper bags or 882 cubic inches or larger. They must be made of at least 40% post-consumer recycled content and be labeled as such on the outside of the bag.

Can a business use bags that are almost 2.25 millimeters thick?

Should a question arise, retailers should be prepared to show that the bags they are using are 2.25 millimeters thick or greater and are labeled as such. No leniency will be given for bags under 2.25 millimeters.

Are there any restrictions on customers bringing their own bags?

No. Customers are encouraged to bring and reuse their own bags when they shop. Some businesses may require customers to bag their own groceries in reusable bags. Customers should clean and disinfect their hands and reusable bags frequently.

Exceptions to the single-use plastic bag ban include those used by consumers inside stores for:

- Packaging bulk items, such as fruit, vegetables, nuts, grains, candy, greeting cards, or small hardware items such as nails, bolts, or screws
- Containing or wrapping items where dampness or sanitation might be a problem including, but not limited to

- Frozen foods
- Meat
- Fish
- Flowers
- Potted plants
- Containing unwrapped prepared food or bakery goods
- Containing prescription drugs

These bags are also exempt:

- Newspaper bags
- Mailing pouches
- Sealed envelopes
- Door hanger bags
- Dry cleaning bags
- Bags sold in packages with multiple bags, like food storage, garbage, or pet waste

Are bags used to wrap bakery goods banned?

Film plastic bags traditionally used by customers in stores for bulk items may be used for individual bakery goods, loaves of bread, and other pastries. They are exempt, as an in-store packaging, and can be used for produce, bulk foods, meat, ice cream, flowers, or any other items prone to moisture problems.

When are single-use plastic bags allowed for prepared food or bakery goods?

These goods may be wrapped in smaller plastic bags typically used for produce, but not in single-use plastic carry-out bags. Single-use plastic carry-out bags like those traditionally provided at point of sale are not allowed for prepared or bakery goods.

What about compostable bags?

Compostable film bags for products bagged in stores before checkout that meet the requirements for compostable products and film bags in [Chapter 70.360 RCW](#) are allowed. Businesses are allowed to give the bags to customers at checkout, with an optional fee. However, Ecology can't currently recommend their use because Washington lacks uniform composting infrastructure.

What are the requirements for reusable heavy-duty plastic bags sold in-store?

Reusable film plastic bags must contain a minimum of 20% post-consumer recycled content until July 1, 2022, and thereafter must be made from a minimum of 40% post-consumer recycled content. The percentage of post-consumer recycled content, the mil thickness, and "Reusable" must be displayed in print on the outside of the plastic bag. Bags meeting these requirements are still subject to the 8-cent charge.

Where does the 8-cent fee on paper and reusable bags go?

Businesses collect and keep this fee, to recover some of the cost of providing the bags.

Is the 8-cent fee taxable?

Yes. The Washington State Department of Revenue has confirmed that the 8-cent charge is subject to sales tax since retail stores are selling the bags.

Can retailers “eat the cost” of paper bags and heavy-duty plastic bags and not charge their customers?

No. The minimum 8-cent charge must be collected and is intended to promote the use of reusable bags by customers. The number of bags and total cost of recyclable paper bags or heavy-duty plastic bags sold must be shown on the customer’s sales receipt. This ensures a level playing field among retailers.

Does the 8-cent charge for paper and reusable plastic bags apply for businesses offering curbside pickup?

Yes, the 8-cent bag charge is for any bag provided to the customer, regardless of whether it is at pickup or point of sale.

What about low-income customers?

The charge does not apply to customers with electronic benefits cards under the Supplemental Nutrition Assistance Program (SNAP), the Washington State Food Assistance Program (FAP), the Women, Infants, and Children (WIC), or Temporary Assistance for Needy Families (TANF) support programs. The Plastic Bag Ban does not apply to food banks and other food assistance programs, but Ecology encourages these organizations to reuse bags whenever possible.

During the transition is Ecology going to offer any promotional assistance?

Ecology provided an outreach toolkit in October 2020 with targeted informational fliers, point of sale cards, and "Bring Your Own Bag" signage. Ecology urges all businesses to display plastic bag ban signs, create promotional materials like branded reusable bags, and to direct questions to this webpage.

Why did the state ban lightweight plastic carryout bags but allow heavyweight, thicker ones?

The thicker, stronger plastic bags — those more than 2.25 millimeters thick — have special uses for which paper is not a good option or not readily available. These bags must still be made of at least 20% post-consumer recycled content and have the recycled content printed on the outside of the bag. In 2025, the required thickness increases to 4 millimeters.

Aren’t the non-woven polypropylene bags sold as reusable bags by many retailers as much of a problem as the lightweight throwaway bags they’re replacing?

No. When regularly used, the impact of reusable bags is less than that of the many more lightweight plastic bags they’ve replaced. They carry from two to three times as much as typical throwaway plastic bags, which often need to be doubled for strength.

What is the plan for informing retailers about the new law?

Ecology developed training, education, and outreach materials to share with Washington businesses, associations, and their members. Ecology will continue to collaborate with:

- Northwest Grocery Association
- Alliances Northwest
- The Washington Hospitality Association
- The Washington State Association of Counties
- The Washington Retail Association
- The Association of Washington Cities

- The Korean Grocers Association

Please contact Ecology staff if your association would like to get involved: Shannon Jones, Western Washington recycling coordinator, shannon.jones@ecy.wa.gov, 425-649-7266.

Will Ecology offer any promotional assistance for retailers?

Yes. You can download informational fliers, point of sale cards, and "Bring Your Own Bag" signage at ecology.wa.gov/Bag-Ban.

How will this be enforced?

Members of the public will be able to report a business using prohibited bags through the Ecology website, starting in 2021. Ecology staff will then review the complaint and respond by providing the business with additional information, resources, and technical assistance. Initially, Ecology will work to assist lagging businesses to get current with this ban. However, repeated and continuous non-compliance may result in up to a \$250 fine.

For the most up to date information, please visit Ecology.wa.gov/Bag-Ban.