

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 941 repealing SMC Chapter 9.25 Retail Carryout Bag Regulations due to State preemption
DEPARTMENT:	Recreation, Cultural and Community Services
PRESENTED BY:	Bethany Wolbrecht-Dunn, Community Services Manager
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input 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 RCW 70A.530 preempts SMC Chapter 9.25 Retail Carryout Bag Regulations that were originally enacted in April 2013.

Tonight, the City Council is scheduled to adopt proposed Ordinance No. 941, which would repeal Chapter 9.25 in its entirety. Proposed Ordinance No. 941 was discussed by the Council on October 4, 2021, and Council directed that staff return this proposed Ordinance for adoption tonight.

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

Staff recommends that the City Council adopt proposed Ordinance No. 941.

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. The statewide ban on single-use plastic bags set forth in RCW 70A.530 will go into effect on October 1, 2021.

RCW 70A.530 contains language that expressly preempts local implementation of a local carryout bag ordinance such as SMC Chapter 9.25, which enacted the carryout bag regulations in the City of Shoreline 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 repeal Chapter 9.25 in its entirety. The City Council discussed proposed Ordinance No. 941 at its October 4, 2021 meeting. A copy of the staff report for that discussion can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2021/staffreport100421-9a.pdf>.

DISCUSSION

At the October 4th City Council meeting, the Council did not raise any issues with the amendments in proposed Ordinance No. 941 as proposed by staff. Tonight, the City Council is scheduled to adopt proposed Ordinance No. 941.

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

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

Staff recommends that the City Council adopt proposed Ordinance No. 941.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 941

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