

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2007)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.18,  
MAUI COUNTY CODE, PERTAINING TO PLASTIC BAG REDUCTION, AND  
AMENDING SECTION 19.530.030, MAUI COUNTY CODE PERTAINING TO  
ADMINISTRATIVE ENFORCEMENT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 20, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 20.18**

**PLASTIC BAG REDUCTION**

Sections:

20.18.010	Purpose.
20.18.020	Definitions.
20.18.030	Administration.
20.18.040	Nonbiodegradable plastic bag restrictions.
20.18.050	Compostable bags.
20.18.060	Violation and penalties.

**20.18.010 Purpose.** A. The production and use of nonbiodegradable plastic bags have significant impacts on the environment, including, but not limited to: contributing to unsightly litter; creating an additional burden on landfills; 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.

B. The council finds and declares that to preserve the health, safety, welfare, and scenic and natural beauty of the County of Maui the use of nonbiodegradable plastic bags must be regulated.

C. The purpose of this chapter is to encourage the use of environmentally preferable alternatives to nonbiodegradable plastic bags, such as recyclable paper bags or reusable bags.

**20.18.020 Definitions.**

“Annual gross sales” means a business’ gross sales either for the preceding calendar year or the business’ preceding fiscal year, when the same constitutes the tax period instead of the calendar year.

“ASTM Standard” means the American Society for Testing and Materials (ASTM)’s International standard D6400 for compostable plastic, as amended.

“Business” means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships and corporations, or any other legally cognizable entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business.

“Compostable bag” means a bag that (1) meets the ASTM Standard for compostability; (2) contains no petroleum-derived content; and (3) displays the word “Compostable” in a highly visible manner on the outside of the bag.

“Checkout bag” means a carryout bag that is provided by a business to a customer at the point of sale for the purpose of transporting groceries or other goods.

“Director” means the director of environmental management.

“Gross sales” means the value actually proceeding from the sale of tangible personal property without any deduction on account of the cost of property sold or expenses of any kind.

“Nonbiodegradable plastic bag” means a plastic bag that does not meet the definition of either “compostable bag” or “reusable bag”.

“Recyclable paper bag” means a paper checkout bag provided by a business to a customer at the point of sale for the purpose of transporting groceries or other goods and meets the following requirements: (1) contains no old growth fiber, (2) is one hundred percent recyclable, and (3) contains a minimum of forty percent post-consumer recycled content.

“Reusable bag” means a bag that is specifically designed and manufactured for multiple re-use and is (1) made of cloth or other washable fabric, or (2) made of other durable material suitable for re-use.

**20.18.030 Administration.** A. The director shall administer this chapter and shall adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes, within one hundred eighty days from the effective date of this ordinance.

B. On or before September 1 of each year, the director shall submit to the council a report assessing any reduction in the use of nonbiodegradable plastic bags.

**20.18.040 Nonbiodegradable plastic bag restrictions.** A. Businesses with annual gross sales of over \$250,000 are prohibited from providing nonbiodegradable plastic checkout bags to their customers at the point of sale. All other businesses are prohibited from providing nonbiodegradable plastic checkout bags to their customers at the point of sale beginning five years from the effective date of this ordinance.

B. All businesses prohibited from providing nonbiodegradable plastic checkout bags may provide for customers as checkout bags only compostable bags, recyclable paper bags, or reusable bags, subject to the limitation of section 20.18.050 of this chapter.

C. Nothing in this chapter shall preclude a business from making reusable, compostable, or recyclable paper checkout bags available for sale or without charge to customers.

**20.18.050 Compostable bags.** Businesses are prohibited from providing compostable checkout bags to customers at the point of sale beginning five years from the effective date of this ordinance.

**20.18.060 Violation and penalties.** A. Violations of this chapter shall be subject to the civil penalties and enforcement procedures of section 19.530.030 of this code.

B. Fines collected pursuant to this chapter shall be deposited into the open space, natural resources, cultural resources, and scenic views preservation fund.”

SECTION 2. Section 19.530.030, Maui County Code, is amended to read as follows:

**“19.530.030 Administrative enforcement.** In lieu of, or in addition to, enforcement by criminal prosecution, if the director of public works, the director of environmental management, or the planning director determines that any persons are violating any provision of titles 12, 14, 16, 18, 19 and 20 of this code, any rules adopted thereunder, or any permit issued thereto, the director may have the person served, by mail or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as the director may adopt.

A. Contents of the notice of violation. The notice shall include at least the following information:

1. Date of the notice;
2. The name and address of the person noticed;
3. The section number of the provision or rule, or the number of the permit which has been violated;
4. The nature of the violation; and
5. The location and time of the violation.

B. Contents of the order.

1. The order may require the person to do any or all of the following:
  - a. Cease and desist from the violation;
  - b. Correct the violation at the person’s own expense before a date specified in the order[.];
  - c. Pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order[.];

d. Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order[,]; and

e. Pay a civil fine not to exceed one percent of the project cost as provided in section 20.08.260.E.2 of this code.

2. The order shall advise the person that the order shall become final thirty days after the date of its mailing or delivery. The order shall also advise that the director's action may be appealed to the board of variances and appeals.

C. Effects of order; right to appeal. The provisions of the order issued by the director of public works, the director of environmental management, or the planning director under this section shall become final thirty days after the date of the mailing or delivery of the order. The person may appeal the order to the board of variances and appeals as provided for in this article. However, an appeal to the board of variances and appeals shall not stay any provision of the order.

D. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines as herein defined to any County taxes, fees or charges except for residential water or sewer charges.

E. Judicial enforcement of order. The director of public works, the director of environmental management, or the planning director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director or agency need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect one hundred eighty days after its approval.

APPROVED AS TO FORM AND  
LEGALITY:

  
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DAVID A. GALAZIN  
Department of the Corporation Counsel  
County of Maui

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