SUMMARY OF CD1:

BILL 10 (2012)
RELATING TO THE USE OF BAGS PROVIDED TO CUSTOMERS

The CD1 is divided into three Parts:

(1) Part I establishes a temporary Plastic Bag Fee Program.

(2) Part II repeals the Plastic Bag Fee Program and establishes a prohibition against businesses providing plastic bags to their customers at the point of sale.

(3) Part III sets forth general provisions including the effective date of the Plastic Bag Fee Program, the repeal date of the Program, the date on which the ban on plastic bags becomes effective, and the effective date for the general provisions.

More specifically, the CD1 does the following:

A. **SECTION 1**

Sets forth Council findings that the City, businesses, and customers must work together to decrease the number of nonbiodegradable plastic bags going into our waste stream. And includes a general description of the bill.

B. **SECTION 2**

1. Establishes the Plastic Bag Fee Program by creating a new article.

2. For the year from _____, 2013 to _____, 2014, requires all businesses to pay a fee of three cents for each plastic bag that is provided to customers at the point of sale. After _____, 2014, such businesses shall pay a fee of five cents for each plastic bag that is provided to customers at the point of sale.

3. Exempts certain plastic bags from the program, including plastic bags provided to customers participating in federal assistance programs.

4. Requires businesses to conduct educational outreach to customers regarding the plastic bag fee program and to encourage the use of reusable bags.

5. Requires businesses to remit to BFS the fees collected and to be subject to penalties and interest for late or underpaid fees.

6. Requires BFS to deposit all the fees collected into the "plastic bag fee program account" in the "solid waste special fund" to be used to support and monitor the plastic bag fee program, and that any surplus shall be used to support other city recycling programs.

7. Establishes provisions relating to penalties and injunctive relief, business reporting, audit authority, annual report, rules, and severability.

C. **SECTIONS 3 to 5**

Establishes the "Plastic Bag Fee Program Account" in the Solid Waste Special Fund in Sec. 6-49.1, ROH. And allows moneys collected to be expended for the purposes of establishing, operating, managing, and monitoring the Plastic Bag Fee Program.

D. **SECTION 6**

Repeals the Plastic Bag Fee Program.

E. **SECTION 7**

Implements the plastic bag ban.

F. **SECTION 8**

Provides that the directors of ENV and BFS shall adopt rules pursuant to HRS Chapter 91 regarding the implementation, administration, and enforcement of the Plastic Bag Fee Program established by this article within 180 days of the enactment of this ordinance.

G. Amends the definition of "plastic bags" in **SECTIONS 2** and **7** of the bill to mean a bag that is made from nonbiodegradable plastic, and is not specifically designed and manufactured for multiple re-use.

H. Excludes bags used to transport "beverages" from the definition of "plastic bags" in **SECTIONS 2** and **7** of the bill.

I. Includes a definition of "nonbiodegradable" in **SECTIONS 2** and **7** of the bill for purposes of clarity.

J. Includes technical and nonsubstantive changes for purposes of style and clarity.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL **10 (2012), CD1**

A BILL FOR AN ORDINANCE

RELATING TO THE USE OF BAGS PROVIDED TO CUSTOMERS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose: The purpose of this ordinance is to regulate the use of nonbiodegradable plastic bags and certain other bags provided to customers.

Council Findings: The United States Environmental Protection Agency has reported that plastics now make up more than 12 percent of the municipal solid waste stream, a dramatic increase from 1960, when plastics were less than 1 percent of the waste stream. In 2010, 31 million tons of plastic waste was generated, which represented more than 12.4 percent of the total tonnage of municipal solid waste. One pervasive use of plastic has been the plastic bags distributed to retail and wholesale customers to permit them to carry merchandise away from the place of sale.

In Honolulu, the production of plastic bags and their distribution to customers at the point of sale have had significant impacts on the environment, including, but not limited to: contributing to unsightly litter on our beaches, parks, and streets; creating an additional burden on our landfill; contributing to the potential death of marine animals through ingestion and entanglement; and polluting the air when they are burned. The manufacture of the bags also diverts millions of barrels of crude oil from other uses, increasing the cost of those other uses.

Currently, Honolulu is the only county in the State that has not yet implemented any regulation on plastic bags. The Council finds that to preserve the health, safety, welfare, and scenic and natural beauty of the City and County of Honolulu, steps must be taken now to regulate and eventually ban the distribution of most plastic bags. The Council further finds that the City, businesses, and customers must work together to decrease the number of plastic bags going into our waste stream and the best way to do this is by first implementing a Plastic Bag Fee Program and then an automatic ban on certain plastic bags distributed at the point of sale.

General Description: This ordinance is divided into three parts. Part I establishes a temporary Plastic Bag Fee Program. Part II repeals the Plastic Bag Fee Program and establishes a prohibition against businesses providing plastic bags to their customers at the point of sale. Part III sets forth general provisions including the effective date of the Plastic Bag Fee Program, the repeal date of the Program, the date on which the ban on plastic bags becomes effective, and its own effective date.

More specifically, the Plastic Bag Fee Program established in Part I requires businesses to pay a fee of three cents for each nonbiodegradable plastic bag provided to customers at the point of sale from _____, 2013 to _____, 2014. Thereafter, businesses will be required to pay a five-cent fee for each nonbiodegradable plastic bag provided to customers. The reduced fee for the initial year of the Program will provide a break for businesses incurring additional costs to get their computers and cash machines set up to comply with this ordinance and the reporting requirements of the Program.

The fees will be remitted to the Plastic Bag Fee Program Account and the monies therein will be used for the purposes of monitoring the Program and establishing, operating, and managing the Plastic Bag Fee Program, including programs that support recycling activities and awareness, with an emphasis on recycling of plastic bags. This effort will lessen the negative impact on our environment caused by nonbiodegradable plastic bags in the waste stream. The main purpose of the Plastic Bag Program will be to reduce the number of plastic bags that end up on city streets, parks, and beaches and in the ocean and our landfill and to encourage the use of environmentally preferable alternatives to nonbiodegradable plastic bags, such as biodegradable plastic bags, recyclable paper bags or reusable bags. This ordinance also exempts certain types of plastic bags used by businesses and plastic bags used by businesses for certain purposes, principally to promote sanitation.

Part II establishes a ban on nonbiodegradable plastic bags provided to customers at the point of sale, subject to some exceptions. The ban will not take effect until _____, at which point the City will have had an opportunity to determine the effectiveness of the fee program in reducing the volume of plastic bags distributed and of the plastic bags returned to the point of sale.

PART I - PLASTIC BAG FEE PROGRAM

SECTION 2. Chapter 9, Revised Ordinances of Honolulu 1990 ("Collection and Disposal of Refuse"), as amended, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. Plastic Bag Fee Program

Sec. 9-__.1 Definitions.

Unless otherwise expressly stated, the following terms shall have the following meanings:

"Business" means any commercial enterprise or establishment operating in the City and County of Honolulu, including an individual proprietorship, joint venture, partnership, corporation, limited liability company, or other legal entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business.

"Business subject to this article" means any business that distributes plastic bags to its customers.

"Department" means the department of budget and fiscal services

"Director" means the director of budget and fiscal services or the director's designee.

"Mil" means one thousandth of one inch.

"Nonbiodegradable" means a substance that cannot be broken down in the environment by natural processes.

"Plastic bag:"

(1) Means a bag that is made from nonbiodegradable plastic, and is not specifically designed and manufactured for multiple re-use; and

(2) Does not include:

(A) Bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;

(B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;

(C) Bags used to protect or transport prepared foods, beverages, or bakery goods;

(D) Bags provided by pharmacists to contain prescription medications;

(E) Newspaper bags for home newspaper delivery;

(F) Door-hanger bags;

(G) Laundry, dry cleaning, or garment bags, including bags provided by hotels to guests to contain wet or dirty clothing;

(H) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(I) Bags used to contain live animals, such as fish or insects sold in pet stores; or

(J) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.

"Proprietary information" means business information covered by any of the exceptions to public disclosure under chapter 92F.

"Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of: (1) cloth or other washable fabric; or (2) durable material suitable for reuse, including plastic that is at least 2.25 mils thick.

"Small business" means a business that had gross sales of $_____ or less in the previous calendar year from all sources, whether within or outside the City and County of Honolulu.

Sec. 9-__.2 Distribution of plastic bags at checkout—Fees.

(a) For the year from _____, 2013 to _____, 2014, all businesses subject to this article shall pay a fee of three cents for each plastic bag that is provided to customers at the point of sale. After _____, 2014, such businesses shall pay a fee of five cents for each plastic bag that is provided to customers at the point of sale.

(b) Plastic bags provided to customers participating in federally approved nutrition assistance programs, including the supplemental nutrition assistance program and the special supplemental nutrition program for women, infants, and children are exempt from subsection (a).

(c) Businesses shall indicate on each customer transaction receipt the number of plastic bags provided at the point of sale.

(d) Nothing in this article shall preclude businesses from making reusable bags available for sale to customers.

(e) Businesses subject to this article shall conduct educational outreach to their customers regarding the plastic bag fee program encouraging use of reusable bags and encouraging the recycling or reuse of plastic bags.

Sec. 9-__.3 Remittance of fees.

(a) No later than the last day of each month, each business subject to this article shall remit to the department the fees required to be paid under Section 9-__.2(a) during the immediately preceding month; provided that a small business may remit the fees on a quarterly basis on the last day of the month following the end of each calendar quarter.

(b) Payments and receipts of fees shall be reported on forms prescribed by the director. Any proprietary or financial information obtained by the department shall be kept confidential and shall not be disclosed to any other person except as required by the state office of information practices, a court of competent jurisdiction or an administrative hearings officer.

(c) Businesses shall be subject to penalties and interest for late or underpaid fees.

(d) The department shall deposit all fees received under this article into the "plastic bag fee program account" in the "solid waste special fund" to be used to support and monitor the plastic bag fee program, and any surplus funds shall be used to support other city recycling programs, with an emphasis on encouraging the use of reusable bags and the recycling and reuse of plastic bags.

Sec. 9-__.4 Penalties and injunctive relief.

Any business violating any provision of this article or any rule adopted pursuant to this article shall be subject to a civil fine of not less than $100 nor more than $1,000 for each day of violation.

The director may institute a civil action in any court of competent jurisdiction for injunctive or other relief to correct or abate violations of this article or any rule adopted pursuant to this article, to collect administrative penalties, or to obtain other relief.

Sec. 9-__.5 Business reporting.

By June 30 of each year, all businesses required to remit fees pursuant to Section 9-__.3 shall submit to the department of environmental services, on forms prescribed by the department of environmental services, an annual report for the previous calendar year containing the following information:

(1) The number of plastic bags provided to customers;

(2) The number of reusable bags provided to customers;

(3) A summary of outreach and educational programs or campaigns conducted to educate and encourage customers to use reusable bags and to recycle or reuse plastic bags; and

(4) The number of plastic bags accepted for return by the business from customers following use. This number may be estimated based on weight or volume of the bags.

Sec. 9-__.6 Audit authority.

The records of each business subject to this article shall be made available, upon request, for inspection by both the department of budget and fiscal services and the department of environmental services or a duly authorized agent of either department. Any proprietary information obtained by the departments or their duly authorized agents shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this article or any rule adopted pursuant to this article; or

(2) As directed by the office of information practices or by order issued by a court or administrative agency hearings officer.

Sec. 9-__.7 Annual report.

The department of environmental services shall submit to the council an annual report, no later than July 31st of each year, which shall include an account of the department's efforts to effectuate this article during the preceding calendar year, and shall include a compilation of the data provided to the department by businesses under Section 9-__.5, the number of reusable bags distributed, the number of plastic bags

distributed, the county-wide reduction in the number of plastic bags distributed as compared with the number distributed in the preceding calendar year, and any recommended policy changes needed to better effectuate this article.

Sec. 9-__.8 Rules

The directors of environmental services and budget and fiscal services shall adopt rules pursuant to HRS Chapter 91 regarding the implementation, administration and enforcement of the Plastic Bag Fee Program

Until a contrary rule is adopted pursuant to this section, the rules adopted pursuant to Section 8 of this ordinance shall remain in effect and shall be deemed rules adopted pursuant to this article.

Sec. 9-__.9 Severability.

The provisions of this article are severable, and if any part of this article should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this article and the remainder of this article shall remain in full force and effect."

SECTION 3. Section 6-49.1, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"**Sec. 6-49.1 Creation of solid waste special fund.**

There is hereby created and established a special fund to be known as the "solid waste special fund." There is established in the solid waste special fund separate accounts to be designated as the "glass incentive account,"[,] the "Honolulu solid waste disposal facility account,"[,] the "recycling account,"[,] the "general operating account,"[,] the "plastic bag fee program account," and such additional accounts as may be established by the director of budget and fiscal services."

SECTION 4. Section 6-49.2, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"**Sec. 6-49.2 Deposits into fund.**

(a) There shall be deposited into the [Solid Waste Special Fund] solid waste special fund:

(1) All revenues and income derived from the operation of the refuse division, as well as all other monies received on behalf of the refuse division, including without limitation (i) all monies collected pursuant to Section 9-4.2(e) and any interest earned on such monies, which shall be credited to the "recycling account"; (ii) all monies as may accrue to the glass recycling program from the assessment of glass dealers, and any interest earned on such monies, which shall be credited to the "glass incentive account"; [and] (iii) all monies derived from the operation of the [Solid Waste Disposal and Energy and Materials Recovery Project] solid waste disposal and energy and materials recovery project established by Ordinances 85-90 and 97-44, including without limitation all fees for disposal of waste at the [Project] project and income derived from the sale of energy produced from the [Project] project and materials recovered from waste processed at the [Project] project, and any interest earned on such monies, which shall be credited to the "Honolulu solid waste disposal facility account"; and (iv) all monies collected pursuant to Section 9- .2 and any interest earned on such monies, which shall be credited to the "plastic bag fee program account"; and

(2) All existing monies in the glass incentive special fund, Honolulu solid waste disposal facility special fund, and recycling special fund, including any interest earned on such monies; provided that existing monies in the glass incentive special fund shall be credited to "glass incentive account,"[,] existing monies in the Honolulu solid waste disposal facility special fund shall be credited to the "Honolulu solid waste disposal facility account,"[,] and existing monies in the recycling special fund shall be credited to the "recycling account."[.]

(b) There shall also be deposited into the [Solid Waste Special Fund] solid waste special fund all revenues, fees, income, and any other monies derived from the operation of the refuse division (other than those derived from the glass incentive special fund, the Honolulu solid waste disposal facility special fund, [and] the recycling special fund, and the plastic bag fee program account)."

SECTION 5. Section 6-49.3, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"**Sec. 6-49.3 Expenditures.**

Moneys on credit to the glass incentive special fund account shall be expended solely for the purposes of administering the glass recycling program and paying

incentives to glass recyclers. Moneys on credit to the Honolulu solid waste disposal facility special fund account shall be expended solely for the purposes specified in Section 11 of Ordinance 85-90. Moneys on credit to the recycling special fund account shall be expended solely for the purposes of establishment, operation, management and expansion of the city's recycling programs, including programs for waste reduction, development of recycling markets and recycling awareness sponsored by the city. Moneys on credit to the plastic bag fee program account shall be expended solely for the purposes of establishment, operation, management and monitoring of the plastic bag fee program, including programs that support recycling activities and awareness, with an emphasis on encouraging recycling and reuse of plastic bags.

Any and all payments required for the refuse division (other than those required by the glass incentive special fund, the Honolulu solid waste disposal facility special fund, and the recycling special fund) shall be made from the general operating fund account."

PART II - PLASTIC BAG BAN

SECTION 6. Article ___ of Chapter 9, Revised Ordinances of Honolulu 1990 ("Plastic Bag Fee Program"), is repealed.

SECTION 7. Chapter 9, Revised Ordinances of Honolulu 1990 ("Collection and Disposal of Refuse"), as amended, is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. Plastic Bag Ban

Sec. 9-__.1 Definitions.

"Business" means any commercial enterprise or establishment operating in the City and County of Honolulu, including an individual proprietorship, joint venture, partnership, corporation, limited liability company, or other legal entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business.

"Business subject to this article" means any business that distributes plastic bags to its customers.

"Nonbiodegradable" means a substance that cannot be broken down in the environment by natural processes.

"Plastic bag:"

(1) Means a bag that is made from nonbiodegradable plastic and is not specifically designed and manufactured for multiple re-use; and

(2) Does not include:

(A) Bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;

(B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;

(C) Bags used to protect or transport prepared foods, beverages, or bakery goods;

(D) Bags provided by pharmacists to contain prescription medications;

(E) Newspaper bags for home newspaper delivery;

(F) Door-hanger bags;

(G) Laundry, dry cleaning, or garment bags, including bags provided by hotels to guests to contain wet or dirty clothing;

(H) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(I) Bags used to contain live animals, such as fish or insects sold in pet stores; or

(J) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.

"Recyclable paper bag" means a paper bag that: (1) is one hundred percent recyclable, (2) contains a minimum of forty percent post-consumer recycled content, and (3) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bags.

"Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of: (1) cloth or other washable fabric; or (2) durable material suitable for reuse, including plastic that is at least 2.25 mils thick.

Sec. 9-__.2 Plastic bag ban.

Businesses are prohibited from providing plastic bags to their customers at the point of sale for the purpose of transporting groceries or other merchandise. Nothing in this article shall preclude a business from making reusable bags, bags made of biodegradable plastic or recyclable paper bags available for sale or without charge to customers at the point of sale for the purpose of transporting such items."

PART III - GENERAL PROVISIONS

SECTION 8. In anticipation of the Plastic Bag Fee Program set forth in Part I (Sections 2 through 5) of this ordinance taking effect, the directors of environmental services and budget and fiscal services shall adopt rules pursuant to HRS chapter 91 regarding the implementation, administration, and enforcement of the Plastic Bag Fee Program within 180 days of the enactment of this ordinance.

SECTION 9. In Sections 3, 4 and 5 of this ordinance, ordinance material to be repealed is bracketed and new ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.

A BILL FOR AN ORDINANCE

SECTION 10. Section 1 of this ordinance shall take effect upon its approval. Part I (Sections 2 through 5) of this ordinance ("Plastic Bag Fee Program") shall take effect on July 1, 2013 and shall be repealed on June 30, _____; provided that on July 1, _____ Sections 3, 4, and 5 shall be reenacted in the same form in which they existed on June 30, 2013. Part II (Section 7) of this ordinance ("Plastic Bag Ban") shall take effect on July 1, _____. Part III (Sections 8, 9, and 10) of this ordinance ("General Provisions") shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin

Tulsi Gabbard

_____

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_____

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_____

DATE OF INTRODUCTION:

February 9, 2012
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

_____
Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

_____
PETER B. CARLISLE, Mayor
City and County of Honolulu