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 paper and 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 plastic bags also diverts millions of barrels of crude oil from other uses, increasing the cost of those other uses.

The Council considered imposing a fee only on the distribution of plastic bags at point of purchase. However, in order to avoid paying the fee for distribution of plastic bags, customers would likely shift to the use of paper bags. Thus, a fee on distribution of plastic bags only, would probably have the effect of significantly increasing the use of paper bags in the City. The Council has been informed that the manufacture and recycling of paper bags require a greater use of fresh water and energy than are required for the manufacture and disposal of plastic bags. Additionally, the increased manufacture and use of paper bags (currently over 14 million trees are cut down to make paper bags in the United States alone) will necessitate the felling of additional trees, which provide numerous ecological benefits, from the removal of carbon dioxide from the air, to serving as critical habitat for wildlife, to cooling their environs.

Currently, Honolulu is the only county in the State that has not yet implemented any regulation on bags distributed to customers at checkout. 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 discourage the distribution of both paper and plastic bags at checkout. The Council further finds that the City, businesses,
and customers must work together to decrease the number of bags going into our waste stream, and the best way to do this is by implementing a Single-Use Checkout Bag Fee Program.

The Single-Use Checkout Bag Fee Program established in this Ordinance requires customers to pay a fee of five cents for each single-use checkout bag they take. Businesses will retain two of the five cents to cover the additional costs they will incur to get their computers, cash registers, books, and educational programs set up to comply with this ordinance.

The fees will be collected by the businesses providing the bags to their customers and remitted to the Single-Use Checkout Bag Fee Program Account to be used by the City for the purposes of establishing, operating, managing and monitoring the Single-Use Checkout Bag Fee Program, including programs that support recycling activities and awareness, with an emphasis on recycling of single-use checkout bags. This effort will lessen the negative impact on our environment caused by these bags (whether made of paper or plastic) in the waste stream. The main purpose of the Single-Use Checkout Bag Fee Program will be to reduce the number of these 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 single-use checkout bags, such as use of reusable bags. This ordinance also creates certain exemptions, some based on the type of bag, and some based on use of the bag. Mostly, these exemptions were created to promote sanitation.

This Ordinance implements a total ban on all nonbiodegradable paper and plastic bags. These bags are particularly problematic because, unlike biodegradable bags, which eventually break down, the effects of nonbiodegradable bags can continue for years until they are destroyed.

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 ___. Single-Use Checkout Bags

Sec. 9-___.1 Definitions.

Unless otherwise expressly stated, the following terms shall have the following meanings:
"Biodegradable" means a substance that can be broken down in the environment by natural processes.

"Biodegradable single-use checkout bag" means a single-use checkout bag that is biodegradable or is a recyclable paper bag.

"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 single-use checkout bags to its customers.

"Customer" means a person who purchases merchandise from a business.

"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.

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

"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.

"Single-use checkout bag":

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(1) Means:

(A) A bag that is made from plastic that is less than 2.25 mils thick; or

(B) A paper bag, whether recyclable or non-recyclable;

that is provided by a business to a customer at the point of sale, and is designed for one-time use to contain and transport merchandise; 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.
"Small business" means a business that had gross sales of $500,000 or less in the previous calendar year from all sources, whether within or outside the City and County of Honolulu.

Sec. 9-__.2 Nonbiodegradable bag ban.

Businesses are prohibited from providing nonbiodegradable paper and plastic bags to their customers at the point of sale for the purpose of transporting groceries or other merchandise.

Sec. 9-__.3 Distribution of single-use checkout bags—Fees.

(a) Customers of any business subject to this article shall pay a fee of five cents for each biodegradable single-use checkout bag that is provided to the customer. Businesses shall remit three of the five cents to the city, but shall retain two cents for the purposes of covering the costs of modifying their equipment and books to comply with this article and to conduct the educational outreach described in subsection (e) and submit the forms required by Section 9-__.5.

(b) Biodegradable single-use checkout 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 single-use checkout bags provided at the point of sale and the price paid by the customer for each bag.

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

(e) Businesses subject to this article shall conduct educational outreach to their customers regarding this article, encouraging use of reusable bags and encouraging the recycling of single-use checkout bags.

Sec. 9-__.4 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 paid to them by their customers under Section 9-__.3(a) during the immediately preceding month, less that portion
permitted to be retained pursuant to Section 9-___.3(a); 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 remittances.

(d) The department shall deposit all remittances received under this article into the "single-use checkout bag fee program account" in the "solid waste special fund" to be used to support and monitor the single-use checkout 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 of biodegradable single-use checkout bags.

Sec. 9-___.5 Penalties and injunctive relief.

Any customer or 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-___.6 Business reporting.

By June 30 of each year, all businesses required to remit fees paid to them by their customers pursuant to Section 9-___.4 shall submit to the department of environmental services, on forms prescribed by that department, an annual report for the previous calendar year containing the following information:

(1) The number of biodegradable single-use checkout bags provided to customers at point of sale;

(2) The number of reusable bags given or sold to customers;
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(3) A summary of outreach and educational programs or campaigns conducted to educate and encourage customers to use reusable bags and to recycle biodegradable single-use checkout bags; and

(4) The number of biodegradable single-use checkout 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-__.7 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-__.8 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-__.6, the number of reusable bags distributed, the number of biodegradable single-use checkout bags distributed that were subject to the fee established under this article, the county-wide reduction in the number of biodegradable single-use checkout 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-__.9 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 this article.
Until a contrary rule is adopted pursuant to this section, the rules adopted pursuant to Section 6 of this ordinance shall remain in effect and shall be deemed rules adopted pursuant to this article.

Sec. 9-__.10 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 "single-use checkout 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 "single-use checkout 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 single-use checkout 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 single-use checkout bag fee program account shall be expended solely for the purposes of establishment, operation, management and monitoring of Chapter 9, Article __, including programs that support recycling activities and education with an emphasis on encouraging use of reusable bags and recycling.
biodegradable single-use checkout bags. Such activities and education shall include providing educational materials for distribution to their customers by businesses distributing biodegradable single-use checkout bags to customers at the point of sale.

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."

SECTION 6. In anticipation of 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 new article set forth in section 2 of this ordinance within 180 days of the enactment of this ordinance.

SECTION 7. 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.
SECTION 8. Sections 1, 6, 7, and 8 of this ordinance shall take effect upon its approval. Sections 2 through 5 of this ordinance shall take effect on July 1, 2013.

INTRODUCED BY:

Ernest Martin

Tulsi Gabbard

DATE OF INTRODUCTION:

February 9, 2012
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of ________________, 20__.

PETER B. CARLISLE, Mayor
City and County of Honolulu