

WASHTENAW COUNTY

CARRYOUT BAG ORDINANCE



Revised Ordinance Published – TBD

Date of Adoption by Board of Commissioners – TBD

Contents

ARTICLE I. General	1
A. Intent & Authority	1
B. Designated County Enforcing Agency.....	1
ARTICLE II. Definitions	1
ARTICLE III. Carryout Bag Requirements, Fees, Exemptions and Waivers	3
A. Application.....	3
B. Carryout Bag Eco-Fee Requirement	3
C. Exempt Customers	3
D. Eco-Fee Waiver Process	3
ARTICLE IV. Washtenaw County Product Stewardship Fund	4
ARTICLE V. Retention, Remittance and Transfer of Eco-Fee	4
A. Retention	4
B. Remittance	4
C. Reporting Requirements	4
ARTICLE VI. Fees	5
ARTICLE VII. Enforcement	5
A. Notice of Violation.....	5
B. Civil Infraction	5
ARTICLE VIII. Adoption of a Schedule of Fines for Violations	5
A. Fines to be established by County Board Resolution	5
B. Fines for Municipal Civil Infraction Violation Notices	5
C. Fines for Municipal Civil Infraction Citations	6
Article IX. Establishment of Municipal Civil Infractions Violations Bureau for Disposition of Violations of the Act, the Rules or this Ordinance	6
ARTICLE X. Right of Appeals	6
ARTICLE XI. Effective Date	6

ARTICLE I. General

A. Intent & Authority

It is the intent of this Ordinance to further the Washtenaw County Solid Waste Management Plan, as mandated by the Michigan Department of Environmental Quality, MDEQ, requiring “utilization to the maximum extent possible the resources available in Washtenaw County, Michigan’s solid waste stream through source reduction, source separation, and other means of resource recovery.”

This Ordinance shall govern distribution of carryout bags in Washtenaw County and is hereby adopted by the Washtenaw County Board of Commissioners.

B. Designated County Enforcing Agency

The Office of the Washtenaw County Water Resources Commissioner will be the designated enforcing agency for the County.

ARTICLE II. Definitions

The following rules, terms, and phrases shall have the definitions given:

AUTHORIZED COUNTY OFFICIAL – personnel of Washtenaw County legally authorized to issue municipal civil infraction citations

BOARD OF COMMISSIONERS – Washtenaw County Board of Commissioners

CARRYOUT BAG ECO-FEE (ECO-FEE) – A fee assessed to each individual disposable carryout bag to be paid by customers at the time of purchase

DISPOSABLE CARRYOUT BAG – a bag made of any material, commonly plastic or paper, provided to a customer at the point of sale to carry out purchases, and which does not meet the criteria set for a reusable carryout bag as defined in this Ordinance; and shall meet the following requirements:

1. if made from paper, shall contain a minimum of forty percent (40%) post-consumer recycled content; and
2. if made from any material, shall display labeling in a highly visible manner for proper recycling or disposal requirements, information available through Washtenaw County.

The following disposable carryout bags are exempt from the provisions of this Ordinance:

- a) any bag used inside a retail grocery to:
 - i. package bulk items, such as fruit, vegetables, nuts, grain or candy; or
 - ii. contain or wrap frozen foods, meat, or fish, whether or not the items are prepackaged;or

- iii. contain unwrapped prepared foods or bakery goods; or
- b) any bag used by a customer or pharmacist to contain prescription drugs; or
- c) any bag used by a retail grocery to prevent moisture damage, such as transportation of soups, sauces, salad dressing, and other liquids; or
- d) A newspaper bag, door-hanger bag, laundry-dry cleaning bag, or bags sold in a package intended for use as a garbage, pet waste or yard waste bags

MUNICIPAL CIVIL INFRACTION – an act or omission that is prohibited by this Ordinance, and for which civil sanctions including without limitation, fines, damages, expenses and costs may be ordered as authorized by Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended

MUNICIPAL CIVIL INFRACTION BUREAU – means the Washtenaw County Office of the Water Resources Commissioner, as established by this Ordinance

MUNICIPAL CIVIL INFRACTION CITATION – Means a written complaint or citation prepared by an authorized County official, directing a person to appear at District Court regarding the occurrence or existence of a municipal civil infraction violation by the person cited

MUNICIPAL CIVIL INFRACTION NOTICE – means a written notice, other than a citation, prepared by an authorized County official, directing a person to appear at the Office of the Water Resources Commissioner to pay the fines and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the County

RETAIL GROCERY – any operation subject to inspection by Michigan Department of Agriculture Food Law requirements, that sells or offers to sell food to consumers for off-premises consumption, as defined by the Michigan Department of Agriculture & Rural Development Food and Dairy Division, Food Law – Act 92 of 2000, as amended

REUSABLE CARRYOUT BAG – a bag with handles that is specifically designed and manufactured to withstand repeated reuse and meets the following requirements:

1. capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;
2. has a minimum volume of 15 liters;
3. is machine-washable or made from a material that can be cleaned and disinfected regularly; and
4. if made from plastic, has a minimum thickness of 4Mil.

WATER RESOURCES COMMISSIONER – Washtenaw County Water Resources Commissioner or authorized representative of the Water Resources Commissioner's Office

ARTICLE III. Carryout Bag Requirements, Fees, Exemptions and Waivers

A. Application

Effective April 22, 2017, except as provided under Exemptions, this Ordinance shall apply to all retail grocery stores in Washtenaw County.

Voluntary compliance with this Ordinance is encouraged for retail establishments not currently subject to this ordinance; however notification regarding intent to participate must be made.

B. Carryout Bag Eco-Fee Requirement

Retail grocers shall assess a ten-cent (\$0.10) eco-fee for each disposable carryout bag provided to the customer at purchase. The eco-fee shall be charged to a customer making a purchase whether the purchase is in person, through the internet, by telephone, by facsimile, electronically, or by any other means.

The retail grocery shall indicate on the customer transaction receipt the number of disposable carryout bags provided, and the associated eco-fee total. No retail grocery shall rebate or otherwise reimburse a customer any portion of eco-fees assessed.

C. Exempt Customers

A customer showing valid proof as a current beneficiary of any United States government federal welfare program, or any local Washtenaw County welfare assistance program, or any State of Michigan welfare assistance program shall be provided reusable or disposable carryout bags free of eco-fee; provided that the bags meet the respective specifications set forth in this Ordinance.

D. Eco-Fee Waiver Process

A retail grocery may apply for exemption status from one or more of the requirements of this Ordinance from the Water Resources Commissioner for up to a one-year period by showing that compliance with the requirements of this Ordinance would cause undue financial hardship or subject that business to a disproportionate economic impact due to circumstances unique to the retail grocery.

A written request for exemption shall include all information necessary for the Water Resources Commissioner to make its decision, including but not limited to documentation showing the factual support for the exemption requested. The applicant may be required to provide additional information to allow the County to determine facts regarding the exemption request; and

The County may by resolution establish a fee for exemption requests sufficient to cover the administration costs for processing the exemption request.

ARTICLE IV. Washtenaw County Product Stewardship Fund

The Washtenaw County Product Stewardship Fund (Stewardship Fund) is created within the County Treasury to further the Washtenaw County Solid Waste Management Plan. The County Treasurer may receive monies or other funds from any source for deposit into the Stewardship Fund. The County Treasurer shall direct the investment of the Stewardship Fund assets. The County Treasurer shall credit to the interest and earnings from fund investments. All carryout bag eco-fees and fines received as a result of a violation of this Ordinance shall be deposited by the County Treasurer into the Stewardship Fund.

Monies in the Stewardship Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the County General Fund.

ARTICLE V. Retention, Remittance and Transfer of Eco-Fee

Retail grocers shall retain twenty-percent (20%) of eco-fees generated and shall remit the remaining eighty-percent (80%) of eco-fees generated to the Washtenaw County Product Stewardship Fund.

A. Retention

The amount retained shall not be classified as revenue for the purposes of calculating sales tax. Eco-fees retained by a retail grocery are intended solely to:

1. Develop and provide educational resources to customers, the public and employees about:
 - a) Carryout bag Ordinance,
 - b) Ecological benefits of reusable bags, and
 - c) Proper end-of-life management and recycling of carryout bags; and
2. Train staff in the implementation and administration of this Ordinance; and
3. Improve or alter infrastructure to allow for the implementation, collection and/or administration of this Ordinance; and
4. Improve infrastructure to increase plastic bag recycling; and
5. Collect, account for and remit the eco-fee to the County.

B. Remittance

The Retail grocery shall transfer and the County shall collect all due eco-fees, which shall be deposited into the Washtenaw County Product Stewardship Fund.

C. Reporting Requirements

All retail grocery stores must report to the Water Resources Commissioner, on a quarterly basis, the total number of disposal paper and disposal plastic carryout bags provided, the total amount of monies collected for providing the disposable carryout bags, and a summary of any efforts undertaken to

promote the use of reusable bags by customers in the prior quarter. The County shall provide the reporting form necessary for retail grocers to demonstrate compliance with the provisions of this Ordinance.

For the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, all quarterly reports must be submitted no later than 30 days after the end of each quarter. If the reporting required in this Ordinance is not submitted in a timely fashion by the retail grocer, such store shall be subject to the fines set forth in Article VIII.

ARTICLE VI. Fees

Eco-fees shall be considered and established via resolution by the Washtenaw County Board of Commissioners as necessary to assure that adequate revenues are generated to operate the program.

ARTICLE VII. Enforcement

A. Notice of Violation

If a Retail grocery is in violation of one or more parts of this Ordinance, the Water Resources Commissioner shall issue a warning notice to the Retail grocery for the initial violation. The notice shall contain a description of the violation and what must be done to remedy the violation. The Retail grocery shall have five (5) calendar days from the receipt of the notice in which to implement and maintain compliant measures in conformance with this Ordinance.

If determined that an additional violation has occurred after a warning notice has been issued for initial violation, the Water Resources Commissioner shall issue a notice to impose a fine against the Retail grocery. All fees shall be paid in accordance with the current fee schedule approved by the Washtenaw County Board of Commissioners.

B. Civil Infraction

A retail grocery found in violation this ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine.

ARTICLE VIII. Adoption of a Schedule of Fines for Violations

A. Fines to be established by County Board Resolution

The County Board of Commissioners shall by Resolution adopt a schedule of fines for violations of this Ordinance, which may be amended by subsequent Resolution. The initial schedule of fines is set forth in Sections B - C, below for both municipal civil infraction citations and municipal civil infraction violation notices.

B. Fines for Municipal Civil Infraction Violation Notices

A Retail grocery found in violation of any provision of this Ordinance receives a municipal civil infraction violation notice, and upon accepting admission of responsibility, shall pay an initial fine at the Municipal Civil Infractions Bureau of \$100.00.

1. In the case that this responsible party commits another offense, on any site, within one (1) year of the date of the initial infraction, the civil fine at the Municipal Civil Infractions Bureau shall be \$200.00.
2. In the case that this responsible party commits another offense within one year of the date of the second offense, the civil fine at the Municipal Civil Infractions Bureau shall be \$500.00. This shall be known as the third offense. All subsequent offenses shall be subject to a civil fine of \$500.00.
3. If an admission of responsibility is not made and the civil fine prescribed by this Ordinance for the violation is not paid at the Municipal Civil Infractions Bureau, a municipal civil infraction citation may be filed with the District Court in accordance with State law.
4. No more than one (1) violation shall be imposed upon a Retail grocery within a seven (7) day calendar period.

C. Fines for Municipal Civil Infraction Citations

A retail grocery who fails to make an admission of responsibility and pay the civil fine as defined above, is issued a municipal civil infraction citation and is found responsible at the district court for a municipal civil infraction citation, shall pay a civil fine as provided by law.

Article IX. Establishment of Municipal Civil Infractions Violations Bureau for Disposition of Violations of the Act, the Rules or this Ordinance

The Municipal Civil Infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Washtenaw County Water Resources Commissioner's Office, 705 N. Zeeb Rd., Ann Arbor, MI 48107.

ARTICLE X. Right of Appeals

The right of an appeal or the authority to interpret this Ordinance shall be provided to the Water Resources Commissioner. All requests for an appeal of any action related to this Ordinance must be filed within fourteen (14) days of that action. All requests shall be made in writing and include the article number of this Ordinance and reason for the appeal.

ARTICLE XI. Effective Date

This revised ordinance shall take effect when notice of adoption is published in a newspaper of general circulation within the County.