

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Adoption of Article IV
Rules Relating to Plastic Bag Reduction

SUMMARY

1. Article IV, entitled "Rules Relating to Plastic Bag Reduction", is adopted to read as follows:

DRAFT - 2012-09-12

COUNTY OF HAWAII
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE RULES

ARTICLE IV

RULES RELATING TO PLASTIC BAG REDUCTION

CHAPTER 1 - General Provisions

Section 1.01 - Title

Section 1.02 - Purpose

Section 1.03 - Definitions

CHAPTER 2 - Plastic Bag Restrictions

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Section 2.05 - Permissible bags

Section 2.06 - Reusable bags and paper bags

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Section 3.09 - Administrative fines

Section 3.10 - Joint and several assessments

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“ARTICLE IV Plastic Bag Reduction

CHAPTER 1 – General Provisions

Section 1.01 - Title. The rules of this chapter shall be known as the "Rules Relating to Plastic Bag Reduction".

Section 1.02 – Purpose. These rules shall govern administrative procedures and enforcement of Chapter 14, Article____, Hawai`i County Code.

Section 1.03 – Definitions. For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, the words and phrases used herein are defined as follows:

"Business" means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships and corporations, or any other legal entity, and includes independent contractors associated with the business. Exempted from these rules are organizations classified under Section 501 (c) of the United States Internal Revenue code or non-incorporated community booster organizations.

"Commission" means the Environmental Management Commission.

"Continuing violation" means any violation that continues beyond the time for correction as set forth in any order of the director.

"Days" means calendar days unless otherwise specified.

"Department" means the department of environmental management.

"Director" means the director of the department of environmental management or the director's designated representatives.

"Mil Thickness" means a unit of measurement that is equal to .001" or "one one-thousandth of an inch". In the United States, the gauge or thickness of a plastic bag is measured by mils.

"Notice of violation and order" means a document signed by the director, identifying that a business is not in compliance with Chapter 14, Article____, Hawai`i County Code, or these rules, and specifies corrective action and may assess fines, as provided by section Chapter 14, Article____, Hawai`i County Code, and these rules.

"Plastic checkout bag" means a carryout bag that is provided by a business to a customer for the purpose of transporting groceries or other retail goods, and that is made from non-compostable plastic or compostable plastic, and is not specifically designed and manufactured for multiple re-use.

"Prescription drug" means the same as defined in section 461-1, Hawai`i Revised Statutes, as amended.

"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 paper specifically designed for multiple and long term use.

"Single-use" means a bag that is specifically designed and manufactured for one-time use, normally for transporting groceries or other products. Plastic bags that are less than 3 mils thickness are considered single-use.

"Violation" means the failure of any business to comply with these rules or the provisions of Chapter 14, Article____, Hawai'i County Code. In situations like a farmer's market where both the business owner and the independent contractors must comply, both entities are responsible for the violation.

"Violator" means any business that is responsible for the violation.

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CHAPTER 2 – Plastic Bag Restrictions

Section 2.04 - Prohibition. Businesses are prohibited from providing single use plastic checkout bags to their customers for the purpose of transporting groceries or other goods, subject to the following transitional purchase exception for the first year. Businesses may make plastic checkout bags available for purchase for one calendar year after the effective date of Ordinance 12-1.

Section 2.05 - Permissible bags. The following types of plastic bags, provided by a business for the uses stated herein, shall not be subject to the prohibition set forth in section §2.04 of these rules:

- (1) Bags without handles, designed and used solely for protection of food products, protection of property or for preventing contamination including, but not limited to, bags for: raw meat, poultry, seafood, frozen foods, deli foods and unpackaged bakery items.
- (2) Bags without handles, designed and used solely for self-service packing of non-prepackaged food items sold in bulk including, but not limited to, bags for: fruits, vegetables, nuts, grains, cereal, flour, rice and candy.
- (3) Bags designed and used solely for protecting garments when provided by a garment cleaning business or formal wear retailer.
- (4) Bags without handles, designed and used for small retail items including, but not limited to jewelry, buttons, beads, ribbon and hardware items like nails, nuts and screws.
- (5) Bags without handles, used for dispensing prescription drugs.

Section 2.06 - Reusable bags and paper bags. (a) Businesses may make reusable bags and/or paper bags available for sale, or without charge, to customers for the purpose of transporting groceries or other goods.

(b) Bags made from plastic that are washable and are specifically designed and manufactured for multiple re-use and are at least 3.0 mils thick will be acceptable as a reusable bag.

CHAPTER 3 - Enforcement

Section 3.07 - Notice of violation and order. (a) The director shall determine whether a business is in violation of the requirements of Chapter 14, Article____, Hawai'i County Code or these rules.

(b) If the director determines that a business is in violation of Chapter 14, Article____, Hawai'i County Code or these rules, the director may issue a notice of violation and order. The initial notice of violation and order shall serve as the one (1) written warning and shall not impose fines but shall warn that fines shall be imposed if the order is not obeyed

(c) The director will have responsibility for enforcement of Chapter 14, Article____, Hawai'i County Code or these rules through the issuance and service of the notice of violation and order upon the business at any of its locations where the violation occurred, or upon any authorized agent of the business. Service shall be in person or by certified mail, return receipt requested. For purposes of these rules, service of the notice of violation and order shall be deemed complete either upon personal delivery or upon mailing.

(d) A notice of violation and order shall state the date of the notice, the name and address of the violator, provision of law violated, a brief description of the violation, the location of the violation, including tax map key number or street address, and date of the violation.

(e) The notice of violation and order shall state that the order to stop further violation shall become effective immediately and will become final unless an appeal is properly filed with the commission. The filing of an appeal with the commission shall not, in itself, stay the effect of any notice of violation and order issued by the director under these rules.

(f) If the business fails to obey the order to stop further violation, the director may issue a second notice of violation and order which shall reiterate the substance of the first notice of violation and order, with such updates as may be appropriate under the circumstances, and shall include an order imposing fines as provided by these rules. The director may issue further notices of violation and order as may be necessary to effect compliance with these rules and the County Code.

(f) A business may appeal a notice of violation and order issued pursuant to this section by filing with the commission a notice of appeal no later than thirty (30) days from the date of the notice of violation and order, in accordance with the commission's rules of practice and procedure. The order shall become final if an appeal is not properly filed within thirty (30) days from the date of the notice of violation and order.

Section 3.08 - Judicial enforcement of order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any notice of violation and order, including seeking a temporary, preliminary or permanent injunction. Where a civil action has been instituted to enforce a civil fine imposed by an order, the director need only show that the notice of violation and order was 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 3.09 - Administrative fines. (a) In addition to correcting a violation under this Article, the violator shall pay to the County an initial civil fine in the amount of \$250 per

day for the second notice of a violation, and \$500 per day for the third notice of a violation. For subsequent violations, the fine shall be \$1,000 per day.

(b) Fines assessed for a violation shall be payable whether a violation is corrected before or after the order imposing fines becomes final.

(c) The director may waive the daily fines prescribed under subsections (a) and (b), in whole or in part, after receiving a written request for a waiver and considering the following:

- 1) The nature and egregiousness of the violation;
- 2) The duration of the violation;
- 3) The type and size of the business in violation;
- 4) The number of repeat violations;
- 5) Any effort taken by the business to correct the violation;
- 6) Reasons for any delay in the correction of the violation; and
- 7) Other extenuating circumstances.

Section 3.10 - Joint and several assessments. The penalties in these rules may be assessed against all violators, jointly or severally, and the director may proceed against such persons as the director may choose.

Section 3.11 - Other legal remedies. The enforcement provisions of this chapter are in addition to remedies provided by the Hawai'i County Code and other law, and do not preclude other civil or criminal penalties or injunctive relief."

2. **Effective Date.** Chapter 6, Rules Relating to Plastic Bag Reduction, shall take effect ten days after filing with the Office of the County Clerk, or on the effective date of County Ordinance No. 12-1 if the latter occurs later.

3. **Severability.** In the event any portion of these rules is declared invalid, such invalidity shall not affect the other parts of these rules.

ADOPTED THIS ____ DAY OF _____, 20____, at _____,
Hilo, Hawai'i.

COUNTY OF HAWAI'I

DORA BECK, P.E.
Acting Director
Department of Environmental Management

APPROVED:

WILLIAM P. KENOI
Mayor
County of Hawai'i

Approved this ____ day of
_____, 20____.

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Hawai'i

I hereby certify that the foregoing rules were received and filed in my office this ____ day of
_____, 20____

County Clerk
County of Hawai'i

CERTIFICATION

I, DORA BECK, P.E., Acting Director of the Department of Environmental Management, County of Hawai'i, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules Relating to Plastic Bag Reduction, drafted in Ramseyer format pursuant to Section 91-4.1, Hawai'i Revised Statutes, which were adopted on the ____ day of _____, 20____, following a public hearing that closed on the ____ day of _____, 20____, and which were filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in the Hawai`i Tribune Herald on _____, 20____.

DORA BECK, P.E.
Acting Director
Department of Environmental Management

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