

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Adoption of Chapter 17-105
Rules Relating to Plastic Bag Reduction

SUMMARY

1. Chapter 17-105, entitled "Rules Relating to Plastic Bag Reduction", is adopted to read as follows:

"TITLE MC-17

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 105

RULES RELATING TO PLASTIC BAG REDUCTION

Subchapter 1 General Provisions

§17-105-1 Title
§17-105-2 Purpose
§17-105-3 Definitions

Subchapter 2 Plastic Bag Restrictions

§17-105-4 Prohibition
§17-105-5 Permissible bags
§17-105-6 Reusable bags and paper bags

Subchapter 3 Enforcement

§17-105-7 Notice of violation and order
§17-105-8 Judicial enforcement of order
§17-105-9 Administrative fines
§17-105-10 Collection of unpaid civil fines
§17-105-11 Joint and several assessment
§17-105-12 Other legal remedies

SUBCHAPTER 1

GENERAL PROVISIONS

§17-105-1 Title. The rules of this chapter shall be known as the "Rules Relating to Plastic Bag Reduction". [Eff 1/12/11] (Auth: HRS §§46-1.5(24), 46-4; Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-2 Purpose. These rules shall govern administrative procedures and enforcement of chapter 20.18, Maui County Code. [Eff 1/21/11] (Auth: HRS §§46-1.5(24), 46-4; Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-3 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:

"Board" means the board of variances and appeals.

"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.

"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.

"Notice of violation and order" means a document signed by the director, identifying a violation, specifying corrective action and assessing a fine, as

provided by section 19.530.030, Maui County Code, and these rules.

"Plastic bag" means a bag that is made from noncompostable 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, Hawaii Revised Statutes, as amended.

"Repeat violation" means a violation resulting in issuance of a notice of violation and order to a business within a five-year period from the date of a previous violation by the business.

"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 durable material suitable for reuse.

"Violation" means providing or offering to provide plastic bags to business customers at the point of sale for the purpose of transporting groceries or other goods.

"Violator" means any business that is responsible for the violation. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030.A) (Imp: HRS §46-1.5(24); MCC §20.18.020)

SUBCHAPTER 2

PLASTIC BAG RESTRICTIONS

§17-105-4 Prohibition. Businesses are prohibited from providing plastic bags to their customers at the point of sale for the purpose of transporting groceries or other goods. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §§19.530.030, 20.18.040.A)

§17-105-5 Permissible bags. The following types of plastic bags, provided other than at the point of sale and not for the purpose of transporting groceries or other goods, shall not be subject to the prohibition set forth in §17-105-4:

- (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, 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.
- (4) Bags used for dispensing prescription drugs that are not provided in any other container or receptacle. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §§19.530.030, 20.18.040)

§17-105-6 Reusable bags and paper bags. (a)
Businesses may make reusable bags and paper bags available for sale or without charge to customers at the point of sale for the purpose of transporting groceries or other goods.

(b) The director may determine that a bag made from plastic is specifically designed and manufactured for multiple re-use if the bag has handles and is at least 3.0 mils thick. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §§ 19.530.030, 20.18.040.B)

SUBCHAPTER 3

ENFORCEMENT

§17-105-7 Notice of violation and order. (a) The director shall determine whether a business is providing plastic bags to its customers at the point of sale for the purpose of transporting groceries or other goods.

(b) If the director determines that a business is providing plastic bags to its customers at the point of sale for the purpose of transporting groceries or other goods, the director may issue a notice of violation and order after one written warning.

(c) The director shall serve the notice of violation and order upon the business or 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. The order may require that the violator stop further violation, pay a fine before a certain date, and pay an additional fine for each day the violation continues beyond a certain date.

(e) The order shall state that the order shall become final thirty days after service of the order unless an appeal is properly filed with the board.

(f) A business may appeal a notice of violation and order issued pursuant to this section by filing with the board a notice of appeal no later than thirty days from the date of service of the notice of violation and order, in accordance with the board's rules of practice and procedure. The order shall become final if an appeal is not properly filed within thirty days from the date of service. [Eff 1/21/11]
(Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§

19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-8 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. 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. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-9 Administrative fines. (a) In addition to correcting a violation, the violator shall pay to the County a civil fine in the amount of \$500.

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

(c) When a violation is not corrected and continues beyond the deadline established in the order or as extended by the director, the violator shall be assessed a daily fine of \$500 for each day during which the violation continues.

(d) In the case of a continuing violation, the daily fine shall be doubled on the first day of each thirty-day period after the end of the time to take corrective action, up to a maximum amount of \$1,000 per day.

(e) In the case of a repeat violation, the initial civil fine shall be \$1,000.

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

- (1) The nature and egregiousness of the violation;
- (2) The duration of the violation;
- (3) The number of recurring and other similar violations;

- (4) Any effort taken by the violator to correct the violation;
- (5) The degree of involvement in causing or continuing the violation;
- (6) Reasons for any delay in the correction of the violation; and
- (7) Other extenuating circumstances. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-10 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 for violations of this chapter to any County taxes, fees, or charges except for residential water or sewer charges. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-11 Joint and several assessment. 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. [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

§17-105-12 Other legal remedies. The enforcement provisions of this chapter are in addition to remedies provided by the Maui County Code and other law, and do not preclude other civil or criminal penalties or injunctive relief." [Eff 1/21/11] (Auth: HRS §46-1.5(24); Charter §8-15.3(1); MCC §§19.530.030, 20.18.030) (Imp: HRS §46-1.5(24); MCC §19.530.030)

2. Chapter 17-105, Rules Relating to Plastic Bag Reduction, shall take effect ten days after filing with the Office of the County Clerk.

ADOPTED THIS 11th DAY OF January,
20 11, at Wailuku, Maui, Hawaii.

COUNTY OF MAUI



KYLE K. GINOZA
Director of Environmental
Management



ALAN M. ARAKAWA
Mayor
County of Maui

Approved this 1 day of
JANUARY 20 11.

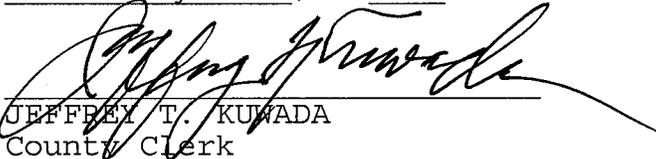
APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

S:\ALL\DAG\RULES\EM\PlasticBag 17-105 ram V2.wpd

Received this 11th day of
January, 20 11.



JEFFREY T. KUYADA
County Clerk
County of Maui

CERTIFICATION

I, KYLE K. GINOZA, Director of Environmental Management, County of Maui, 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, Hawaii Revised Statutes, which were adopted on the 11th day of January, 20 11, following a public hearing that closed on the 17th day of August, 20 10, 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 Maui News on July 16, 20 10.



KYLE K. GINOZA
Director of Environmental
Management