

PUBLIC NOTICE

BILL NO. 2322, Draft 2  
ORDINANCE NO. 885

A BILL FOR AN ORDINANCE ESTABLISHING A NEW ARTICLE 19,  
CHAPTER 22, KAUA'I COUNTY CODE 1987, RELATING TO PLASTIC BAG  
REDUCTION (Effective January 11, 2011)

CERTIFICATE OF THE COUNTY CLERK

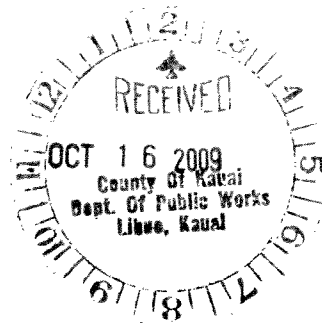
I hereby certify that Bill No. 2322, Draft 2, was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on October 7, 2009, by the following vote:

FOR ADOPTION: Bynum, Chang, Furfaro, Kawahara	TOTAL - 4,
AGAINST ADOPTION: Kaneshiro, Asing	TOTAL - 2,
EXCUSED & NOT VOTING: None	TOTAL - 0,
RECUSED & NOT VOTING: Kawakami	TOTAL - 1,

approved by the Mayor on October 12, 2009, and now has the effect of law as Ordinance No. 885.

Lihu'e, Hawai'i  
October 15, 2009  
(One Publication - The Garden Island - October 21, 2009)

/s/ Peter A. Nakamura  
County Clerk, County of Kaua'i



A BILL FOR AN ORDINANCE ESTABLISHING  
A NEW ARTICLE 19, CHAPTER 22, KAUA'I COUNTY CODE 1987,  
RELATING TO PLASTIC BAG REDUCTION

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

“SECTION 1. Findings and Purpose. The production and use of plastic checkout bags have significant impacts on the environment, including, but not limited to: contributing to unsightly litter; creating an additional burden on the landfill; contributing to potential death of marine animals through ingestion and entanglement; and requiring the use of millions of barrels of crude oil for their manufacture.

The Council of the County of Kaua'i finds and declares that to preserve the health, safety, welfare and scenic beauty of Kaua'i, the distribution of plastic bags should be regulated and prohibited.

The purpose of this legislation is to encourage customers to bring their own reusable bags when shopping. If the customer forgets to bring their own bag, or chooses not to, this ordinance does not prevent the retail establishment from providing recyclable bags for sale. This effort will lessen the negative impact on our environment caused by plastic shopping bags. Produce bags in grocery stores will still be permissible.

SECTION 2. Chapter 22, Kauai County Code 1987, is hereby amended by adding a new Article 19 to be appropriately designated and to read as follows:

**ARTICLE 19. PLASTIC BAG REDUCTION**

**Sec. 22-19.1 Definitions.**

As used in this Article, unless the content clearly requires otherwise:

“Biodegradable Bag” means a bag that (1) contains no polymers derived from fossil fuels; and (2) is intended for single use and will decompose in a natural setting at a rate comparable to other biodegradable materials such as paper, leaves, and food waste. The Department of Public Works shall promulgate rules identifying bags meeting this definition. These rules shall also set forth an application process whereby a retail establishment can obtain determination whether a bag is a biodegradable bag.

“Checkout Bag” means a bag that is provided by a retail establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout bags does not include bags provided solely for produce, bulk food, or meat at a produce, bulk food or meat department within a grocery store, supermarket, produce or meat market or other similar retail establishment.

“Recyclable Paper Bag” means a bag that meets all the following requirements: (1) contains no old growth fiber; (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled content; and (3) displays the words “Reusable” and “Recyclable” in a highly visible manner on the outside of the bag.

“Retail Establishment” means any commercial business facility that sells goods directly to the ultimate consumer, including, but not limited to, grocery stores, pharmacies, liquor stores, “mini-marts,” and retail stores and vendors selling clothing, food and personal items. Retail establishments shall not include fundraisers by organizations classified under Section 501(c) of the United States Internal Revenue Code or non-incorporated community booster organizations.

“Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine washable fabric and/or is made of a durable material at least 2.25 millimeters thick and suitable for reuse.

**Sec. 22-19.2 Mandatory Use of Recyclable Checkout Bags.**

(a) All retail establishments shall provide only the following as checkout bags to customers: recyclable paper bags, biodegradable bags and/or reusable bags.

(b) Nothing in this ordinance shall preclude any retail establishment from offering checkout bags for sale to customers.

**Sec. 22-19.3 Enforcement and Penalties.**

(a) The County Engineer or designee will have primary responsibility for enforcement of this Article through the issuance of violation notices and requests to correct or cease the violation. The County Engineer or designee is authorized to promulgate regulations and to take any and all other actions reasonably necessary to enforce this Article, including, but not limited to, entering the premises of any affected Retail Establishment to verify compliance.

(b) Should the retail establishment fail to comply with the requirements of this Article after reasonable notice by the County Engineer or designee, the County Engineer or designee may seek administrative imposition of a fine. The owner or

legal entity holding title to the retail establishment found in violation of this Article shall be subject to civil penalties as follows: (1) \$250.00 per day for the first notice of violation, (2) \$500.00 per day for the second notice of violation within 365 days of the first notice, and \$1,000.00 per day for the third and subsequent notices of violation within 365 days of the first notice.

(c) The County Engineer or designee must afford the Retail Establishment the opportunity for hearing before a hearings officer under Hawai'i Revised Statutes Chapter 91.

**Sec. 22-19.4 No Conflict with Federal or State Law.**

Nothing in this Article shall be interpreted or applied so as to create any requirement, power or duty in conflict with any federal or state law.

**Sec. 22-19.5 Exemptions.**

Situations where compliance with the requirements of this Article would deprive a retail establishment of any rights to which it would be entitled.

SECTION 3. Severability. If any provision of this Article, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

SECTION 4. This ordinance shall take effect on January 11, 2011."

Introduced by: /s/ TIM BYNUM  
/s/ LANI T. KAWAHARA

Date of Introduction:

**July 22, 2009**

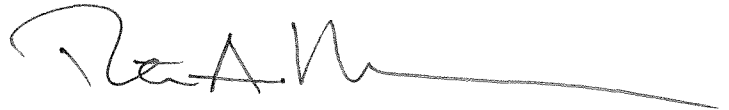
Lihu'e, Kaua'i, Hawai'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2321, Draft 2, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on October 7, 2009, by the following vote:

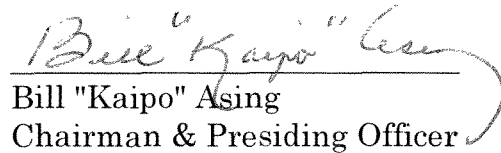
FOR ADOPTION: Bynum, Chang, Furfaro, Kawahara	TOTAL - 4,
AGAINST ADOPTION: Kaneshiro, Asing	TOTAL - 2,
EXCUSED & NOT VOTING: None	TOTAL - 0,
RECUSED & NOT VOTING: Kawakami	TOTAL - 1.

Līhu'e, Hawai'i  
October 8, 2009



Peter A. Nakamura  
County Clerk, County of Kaua'i

ATTEST:

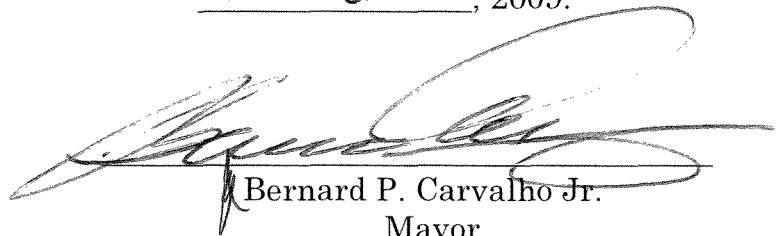
  
Bill "Kaipo" Asing  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

October 9, 2009

Approved this 12<sup>th</sup> day of

October, 2009.



Bernard P. Carvalho Jr.  
Mayor  
County of Kaua'i