

Testimony of William Kominers

Bill No. 24-24 Paper Carryout Bags and Prohibition on Plastic Carryout Bags

(Public Hearing: January 14, 2025)

Good afternoon President Stewart and Members of the Council. My name is Bill Kominers, testifying as an individual on Bill No. 24-24, the excise tax on disposable carryout bags. I am here today because this Bill seems to cry out for evaluation against the Law of Unintended Consequences. The proposed Bill seems primarily intended to reduce the presence of plastic bags in the waste system and, secondarily, to reduce the need for recycling of paper bags by reducing their use. But at present, like the existing law, the Bill is all stick, no carrot to the consumer.

The Bill would require that each time “a retail establishment,” -- any retail establishment -- provides a non-exempt bag to a customer, the tax is imposed. Therefore, the customer should carry a reusable bag to avoid that tax and avoid generating the waste of the carryout bag. In that transaction, the Bill seems to presume that paper or plastic bags can be readily replaced by reusable bags. This is often true, but not always. And not every bag is created equal.

Not every disposable paper or plastic bag has a reusable replacement. When it comes to the routine trip to the grocery store, reusable bags are a staple in our family. However, not all trips are to the grocery store, and not all products are the size of groceries. The Bill discriminates against “big stuff.” Let me mention several examples.

1. Buy one or two pillows at Target. Bring your own reusable bag? I’m not certain that there is a reusable bag that would fit these products. Maybe a bag is not needed, because I’m putting the pillows right into my car. But what if I took public transportation? Or bought additional items?

2. Art Supplies. When someone goes to an art supply store to buy a sheet of mattboard or foamcore (perhaps to prepare an exhibit to present to the County Council), they are often given a large plastic bag—both to hold the product and to protect it from the weather. Mattboard and foamcore do not play well with rain. Boards used for exhibits may be 24 by 36 inches. Again, there may be no reusable bags that would seem to fit this product.

3. Dry cleaners. Section 48-66(5) exempts the plastic that dry cleaners put over shirts, suits, and dresses that are on hangars. However, if you do not receive your dry cleaning on a hanger, but instead have it pressed and folded, you receive it in a paper bag. I can only assume from the content of the Bill that this bag would be subject to the tax. To avoid this cost, such dry cleaned items would have to be carried in your arms to the back of a car. (This, of course, ignores the possibility of what one would do if travelling to the dry cleaners on public transit and how you would then carry your weeks' worth of dry cleaning, sans bag, on the public transit.) I recommend that you also exempt the paper bags that dry cleaners use, by adding the text from Section 48-66(5) to Section 52-77.

4. Packaging. Sometimes bags are used as packaging, as noted in Section 48-66(4) with the inclusion of "small hardware items" (lines 20-21). Purchasing from the little bins of loose nuts, bolts, washers, and the like, you pick out how many you need, put them in, usually, a small brown paper bag, and write the number of items and the unit price on the outside of the bag for the cashier. These are generally very small items that are sold loose, so some type of packaging is needed once you make a selection. In addition, as these items are very small, the store wants to avoid the risk of concealment. Using the bag as the price tag speeds the purchase transaction for the cashier. Perhaps, because this small paper bag is not provided at the cash register, *i.e.*, at "the point of sale," it is de facto exempt from the definition. But if so, please make that clear in the legislative history. But, note that in Section 48-66(4), these bags for hardware stores are exempt if they are plastic. Just add the same exemption in Section 52-77.

In short, there are not reusable bags available that are suitable for all types of purchases. Yet the Bill assumes there are, and penalizes retailers and customers in selling items for which reusable bags are not available nor practical. The consumer does not have a choice in avoiding the tax, because there are no substitute, reusable carryout bag for many products—or for when you are carrying a large number of products. The Bill also penalizes those products for whom placement in a bag is a part of the packaging or the retail sale operation.

So much for examples. Some clarifications in the Bill are also needed.

1. Lines 76-79; Sections 52-77(3) and (4). Subsection (4) seems unnecessary as being already subsumed within Subsection (3). If Subsection (3) covers a bag given

to take prepared food from a restaurant, the source location within the restaurant seems irrelevant. Thus, Subsection (3) seems to already cover the drive-through window as a source location, and Subsection (4) could therefore be deleted.

2. Lines 82-83; Section 52-77(6). This Section exempts paper bags used by third party delivery services to deliver food items. But the same paper bag, if used by the food establishment itself, to deliver its own product, is not exempt. Of course, under Section 52-77(3) that same paper bag would be exempt if the customer picked it up at the restaurant counter. The paper bag used for delivery should be equally exempt, regardless of who carries it to its destination.

3. Large Items. There should be a breakpoint on the size of the bag that triggers the tax or prohibition. The proposed restrictions and tax should only apply to bag under a certain size. Said another way, there should be new exemptions for bags that are simply over a certain size. I don't know what that size is, but it is there somewhere. (I have been advised that such a protection may already be in the law, but I cannot find it. If it is there, make it clear and explicit. Please.)

4. Advertising. Often, bags are used by retailers for advertising; they want you to walk around the Mall carrying their bag. A reusable bag limits this advertising. Even worse, what if you bring a different store's bag? Imagine Nordstrom's embarrassment if you bring in a J.C. Penney's bag with you and use it to carry your Nordstrom's merchandise! So, can a store subsidize the tax in order to give bags to its customers, and continue to achieve the advertising goal?

I have not even had time to discuss the possible health issues with transference of bacteria with reusable bags—from the bag carrying apples to one that is used to carry clothing or other goods. Nor have we considered the potential risks from the use of reusable bags to carry cleaning supplies or other potentially toxic materials from the grocery store one day, and foodstuffs the next.

I feel responsible to give you an alternative.

Recycling as a solution in lieu of a tax.

How about using a carrot, rather than a stick?

Paper and plastic bags are not automatically “disposable.” They are each recyclable, not just through multiple uses by the consumer, but also by physical

recycling through retailers. If the goal is to avoid placing bags into the waste system, instead of this prohibition and tax, you could implement a deposit and refund system for return of carryout bags (like soda bottles used to have). Pay the five or ten cent tax as a deposit when given the bag, and have the payment returned when the bag is turned in. This would encourage people to return bags for recycling or reuse in order to get the deposit refund. This could have the additional salutary effect of causing people to pick up loose bags along the roads or elsewhere and turn them in for the deposit. This would not only clean up the streams and the Bay, but also clean up the streets, parks, and playgrounds.

Conclusion

If the goal is to compel use of reusable bags to take home purchases, to be fair, the Council should first evaluate whether that is possible in all cases. Particularly, the question of: are there reusable bags that will fulfill the purpose for all the products for which bags might be needed? In summary, I believe that the Council should narrow the scope of this Bill to avoid the many unintended consequences that can readily result from the Bill as written. Assuming that this Bill is a means to an end, you should craft a Bill that reaches only the goals intended, rather than so many unintended or alternative results.

Thank you for your consideration.