

ORDINANCE NO. 580

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 8.17 (REUSABLE BAGS) OF
TITLE 8 (HEALTH AND SAFETY) TO THE
MUNICIPAL CODE**

The City Council of the City of Brisbane does hereby ordain as follows:

SECTION 1. MUNICIPAL CODE AMENDMENT. Chapter 8.17 of the Municipal Code, entitled "Reusable Bags," is hereby added as follows:

**Chapter 8.17
REUSABLE BAGS**

Sections:

8.17.010	Findings and Purpose
8.17.020	Definitions
8.17.030	Enforcement
8.17.040	Single-use carry-out bag
8.17.050	Recordkeeping and Inspection
8.17.060	Administrative Fine
8.17.070	Severability

§8.17.010 Findings and Purpose.

The City Council of the City of Brisbane finds that:

- A. The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.
- B. The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- C. Single-use carryout bags contribute to environmental problems, including litter in storm-drains, creeks, the bay and the ocean.
- D. Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

E. The City of Brisbane has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags.

F. On October 23, 2012 the San Mateo County Board of Supervisors approved an Environmental Impact Report ("EIR") and adopted an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents (\$.10) per bag initially and (\$.25) after January 1, 2015.

G. The County's EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and six cities in Santa Clara County), including the City of Brisbane, adopting the County's ordinance within their own jurisdictions.

H. On November 6, 2012, San Mateo County adopted Reusable Bag Ordinance No. 04637 banning single-use carryout bags from stores, while requiring stores to provide reusable bags.

I. The City of Brisbane intends this Ordinance to fall within the scope of the County's EIR and has therefore modeled this Ordinance on the County's ordinance.

J. The City Council does find and declare that it should restrict the single use carry-out bags as set forth in this ordinance.

§8.17.020 Definitions.

When used in this Chapter, the following words shall have the meanings ascribed to them in this Section:

A. "Customer" means any person obtaining goods from a retail establishment.

B. "Garment Bag" means a travel bag made of pliable, durable material with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

C. "Nonprofit charitable re-user" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent of its revenues from the handling and sale of those donated goods or materials.

D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Prepared food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

F. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.

G. "Recycled paper bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent post-consumer recycled content; is one hundred percent recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.

H. "Retail establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the City of Brisbane. "Retail establishment" does not include public eating establishments or nonprofit charitable re-users.

I. "Reusable bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag may meet the above criteria regardless of whether it has handles or not.

J. "Single-use carry-out bag" means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carry-out bags" do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag

§8.17.030 Enforcement.

The County of San Mateo's Environmental Health Division, its officers, employees and agents are hereby authorized to enforce, on behalf of the City of Brisbane, this Chapter and any amendments thereto, within the jurisdictional boundaries of the City of Brisbane. Such enforcement authority includes, but is not limited to, the collection of fees and fines, and the authority to hold hearings and issue administrative fines for violations of this Chapter within the geographical limits of the City of Brisbane.

§8.17.040 Single-use carry-out bag.

A. No retail establishment shall provide a single-use carry-out bag to a customer, at the check stand, cash register, point of sale or other point of departure for

the purpose of transporting food or merchandise out of the establishment except as provided in this section.

B. On or before December 31, 2014 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. On or after January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents.

D. Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

E. A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals: a customer participating in the California Special Supplement Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

§8.17.050 Recordkeeping and Inspection.

Every retail establishment shall keep complete and accurate record or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment, for a minimum period of three years from the date of purchase and sale, which record shall be available for inspection at no cost to the County during regular business hours by any County employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information including incomplete records or documents to the County shall be a violation of this Chapter.

§8.17.060 Administrative Fine.

A. Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.

B. Amount of Fine. Upon findings made under subsection A., the retail establishment shall be subject to an administrative fine in an amount not to exceed the

amounts set forth in section 1.14.030 of the Brisbane Municipal Code as penalties for an infraction.

C. Separate Violations. Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.

D. Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that the above listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.

E. Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional..

SECTION 3. CEQA REVIEW. On October 23, 2012, the County of San Mateo County adopted a Program Environmental Impact Report (“EIR”) that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the County of San Mateo as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.* It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Brisbane acts as a responsible agency for adoption of this ordinance within the City of Brisbane. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

- 1) The Final Program Environmental Impact Report (“Final Program EIR”) is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations section 15000 et seq. (“CEQA Guidelines”).
- 2) On the basis of the Initial Study, Notice of Preparation, Final Program EIR, and public comment received by both the County of San Mateo and the City of Brisbane, there is no substantial evidence that the project as proposed will have a significant effect on the environment.
- 3) Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the City Council of the City of Brisbane.
- 4) None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the County’s Final Program EIR and is within the scope of the project described in the County’s Final Program EIR.
- 5) A Notice of Determination shall be filed pursuant to CEQA Guidelines sections 15094 and 15096.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect ninety (90) days after its passage and adoption.

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The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the 18th day of March, 2013, by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

 Raymond C. Miller, Mayor

ATTEST:

 Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

 Harold S. Toppel, City Attorney