

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF HERCULES ADDING CHAPTER 11 TO TITLE 5 OF THE HERCULES MUNICIPAL CODE REGULATING THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER CARRYOUT BAGS AND PROMOTING THE USE OF REUSABLE BAGS WITHIN THE CITY OF HERCULES

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 11 is hereby added to Title 5 of the Hercules Municipal Code.

CHAPTER 11. TITLE 5.

REGUULATIONS ON THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER CARRYOUT BAGS

SECTION 2. DEFINITIONS

When used in this article the following terms shall mean or include:

- a. "Carryout Bag" means a bag other than a Reusable 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. Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department with in a store to the point of sale.
- b. "Customer" means any person purchasing goods from a Retail Establishment.
- c. "Nonprofit Charitable Reuser" 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 (50%) of its revenues from the handling and sale of those donated goods or materials.
- d. "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.
- e. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- f. "Plastic Bag" means any bag made predominantly of plastic derived from either petroleum, ethylene derived from natural gas, or a biologically-based source, such as corn or other plant sources, which is provided to a Customer at the point of sale. Plastic bags includes: compostable and biodegradable bags but does not include Reusable

Bags, Produce Bags, or Product Bags.

- g. "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- h. "Postconsumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Postconsumer Recycled Material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- i. "Prepared Food" means foods or beverages which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require not 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.
- j. "Produce Bag" or "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a Retail Establishment or to prevent such food items from coming into direct contact with other purchased items.
- k. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.
- l. "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 and that meets all of 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%) Postconsumer Recycled Material; (3) displays the words "Reusable and Recyclable" in a highly visible manner on the outside of the bag; (5) and displays the percentage of Postconsumer Recycled Material used; and (6) the name and location of the manufacturer.
- m. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;; (3) is machine washable or capable of being cleaned and disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts as defined by applicable State and Federal standards and regulations for packaging or reusable bags (5) if made of plastic, is a minimum of at least 2.25 mils thick.
- n. "Retail Establishment" means any commercial establishment that sells perishable and

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 city limits of the City of Hercules. Retail Establishments does not include Public Eating Establishments or Nonprofit Charitable organizations.

- o. “Single-Use Carryout Bag” means a bag other than a Reusable 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. Single-Use Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department with in a store to the point of sale.

SECTION 3. PLASTIC CARRYOUT BAGS PROHIBITED

- a. No Retail Establishment shall provide a Single-Use Carryout 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 provide in this Ordinance.
- b. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

SECTION 4. PERMITTED BAGS

All Retail Establishments shall provide or make available to a Customer only Recycled Paper Carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this ordinance. Nothing in this ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

SECTION 5. REGULATION OF RECYCLED PAPER CARRYOUT BAGS

- a. Any Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of 10 cents (\$0.10) for each bag provided, except as otherwise provided in the ordinance.
- b. All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carryout Bags provided and the total amount charged for the bags.
- c. All monies collected by a Retail Establishment under this ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:
 - 1. Costs associated with complying with the requirements of this ordinance,
 - 2. Actual costs of providing Recycled Paper Carryout Bags, or

3. Costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of reusable bags, if any.
4. Fund reusable bags giving-aways during limited-time store promotions.
- d. All Retail Establishments must report to the City Manager (or Other Designee), on an annual basis, the total number of Recycled Paper Carryout Bags provided, the total amount of monies collected for providing Recycled Paper Carryout Bags, and a summary of any efforts a Retail Establishment has undertaken to promote the use of reusable bags by Customers in the prior year. Such reporting must be done on a form prescribed by the City Manager, and must be signed by a responsible agent or officer of the Retail Establishment confirming that the information provided on the form is accurate and complete. All reporting must be submitted no later than 45 days after the end of each calendar year.
- e. If the reporting required is not timely submitted by a Retail Establishment, such Retail Establishment shall be subject to the fines set forth.

SECTION 6. USE OF REUSABLE BAGS

- a. All Retail Establishments must provide Reusable Bags to Customers, either:
 1. For sale; or
 2. At a minimum charge of 10 cents (\$0.10) per bag during limited-time store promotions.
 3. Exemptions would be made for sanctioned reusable bag giveaway events that are intended to promote the use of reusable bags not exceeding a total of 90 days in any consecutive 12-month period.
- b. Each Retail Establishment is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging Customers to use reusable bags.

SECTION 7. EXEMPT CUSTOMERS

A Retail Establishments may provide at the point of sale, free of charge, either reusable bags or Recycled Paper Carryout Bags or both, at the Retail Establishment's option, to any Customer participating either in the California Special Supplemental 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 or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code, the State Department of Social Services Food Stamp program, other government-subsidized purchase programs for low-income residents.

SECTION 8. ENFORCEMENT AND VIOLATION-PENALTY

- a. The City Manager and/or his/her agent have primary responsibility for enforcement of this ordinance. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Retail Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager.
- b. If the City Manager determines that a violation of the ordinance has occurred, he/she will issue a written warning notice to the Operator of a Retail Establishment that a violation has occurred and the potential penalties that will apply for future violations.
- c. Any Retail Establishment that violates or fails to comply with any of the requirements of the ordinance after a written warning notice has been issued for that violation shall be guilty of an infraction.
- d. If a Retail Establishment has subsequent violations of the ordinance that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the Operator of the Retail Establishment to the City of Hercules:
 1. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;
 2. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or
 3. A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.
- e. A fine shall be imposed for each day a violation occurs or is allowed to continue.
- f. All fines collected pursuant to the ordinance shall be deposited in the Solid Waste Management Fund to assist the department with its costs of implementing and enforcing the requirements of the ordinance.
- g. Any Retail Establishment Operator who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the City Manager no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the City Manager. The hearing officer will

conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City of Hercules, and will give the appellant 10 business a days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

SECTION 9. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The CITY COUNCIL hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

SECTION 10. NO CONFLICT WITH FEDERAL OR STATE LAW

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

PUBLICATION AND EFFECTIVE DATE

This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

- a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:
 1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or
 2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or
 3. Publishing a summary of the Ordinance prepared by the City Attorney in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Council Members voting for and against the Ordinance.

This Ordinance shall go into effect six (6) months after the date of its passage and adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the twenty-sixth day of August 2014, and was passed and adopted at a regular meeting of the Hercules City Council on the ninth day of September 2014, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Myrna L. de Vera, Mayor

ATTEST:

Margaret S. Roberts
Administrative Services Director/City Clerk