

ORDINANCE NO. 1381 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING THE MARTINEZ MUNICIPAL CODE BY DELETING SECTIONS 8.18.350 THROUGH 8.18.380; AND BY ADDING TO TITLE 8, (HEALTH AND SAFETY) CHAPTER 8.23, CARRYOUT BAGS, SECTIONS 8.23.010 THROUGH 8.23.070 PROHIBITING RETAILERS AND PUBLIC EATING ESTABLISHMENTS FROM PROVIDING SINGLE USE CARRYOUT BAGS TO CUSTOMERS, REQUIRING RETAILERS TO IMPOSE MINIMUM CHARGES FOR RECYCLED PAPER CARRYOUT BAGS, AND PROMOTING THE USE OF REUSABLE BAGS BY RETAIL AND PUBLIC EATING ESTABLISHMENT CUSTOMERS AND FINDING THAT THE ADOPTION THEREOF IS EXEMPT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), SECTIONS 15307, 15308 AND 15061(B)(3)

**WHEREAS**, the use of all single use shopping bags (plastic, paper, biodegradable) have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and

**WHEREAS**, many of these single-use carry out bags are made from plastic or other material that does not readily decompose; and

**WHEREAS**, approximately nineteen billion (19,000,000,000) single-use plastic bags are used annually in California but less than 5% are recycled; and

**WHEREAS**, numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains and fouling rivers and beaches; and

**WHEREAS**, the City taxpayers must bear the brunt of clean-up costs; and

**WHEREAS**, from an overall environmental and economic perspective, the best alternative to single-use plastic and paper carryout bags is a shift to reusable bags; and

**WHEREAS**, over 90 jurisdictions in California have approved ordinances that impose paper bag fees on the customers requesting these bags and these fees have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and significantly reducing single use bag consumption; and

**WHEREAS**, this ordinance requires retail stores that decide to make recycled paper carryout bags available to their customers to pass-through the reasonable cost of providing these bags; and

**WHEREAS**, the proceeds from the collection of the paper bag pass-through would be retained by the retailer, the City will not receive any revenues from the retailers' collection of the paper bag cost pass-through, and this ordinance does not specify how the retailers must expend the monies collected; and

**WHEREAS**, customers can avoid this cost pass-through by using reusable bags; and

**WHEREAS**, a paper bag cost pass-through is an essential element of the proposed ordinance as it is intended to provide a disincentive to customers to request paper bags when shopping at retail establishments and to promote a shift towards the use of reusable bags by City of Martinez consumers; and

**WHEREAS**, it is the City's desire to lead by example and whenever possible to conserve resources, reduce the amount of solid waste, and to protect the public health and welfare including local wildlife, all of which increase the quality of life for City of Martinez residents and visitors.

**The City Council of the City of Martinez does ordain as follows:**

**SECTION 1. CEQA Findings.** The City Council finds that there is no possibility that the adoption and implementation of this Ordinance will have significant effects on the environment, as pursuant to Title 14 California Code of Regulations, Chapter 3, Sections 15307 and 15308, this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in that the City Council of the City of Martinez, acting as a regulatory agency, is taking actions to protect natural resources (15307) and the environment (15308), the adoption of this ordinance protects natural resources and the environment by reducing the use of single use bags which cause harm to streams, lakes and other water bodies, contribute substantially to greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation. Furthermore, as per Section 15061(b)(3), the project is exempt as it can be seen with certainty that there is no potential for significant effect, in that there are no unusual circumstances surrounding these regulations or the properties to which they would apply which would result in a reasonable possibility that the activity would have a significant effect on the environment. No project is proposed for a site subject to listing in accordance with Section 65962.5 of the California Government Code, located within a flood plain, or a state scenic highway or which could affect an historic resource.

**SECTION 2.**

Chapter 8.18 of Title 8 of the Martinez Municipal Code is hereby amended by deleting the following sections as follows:

- 8.18.350 Plastic Film Voluntary Phase Out Period.
- 8.18.360 Returnable and Recyclable Plastic Film Shopping and Dry leaning Bags.
- 8.18.370 Plastic Film Reporting Requirements.
- 8.18.380 Plastic Film Packaging Exemptions.

**CHAPTER 8.18  
REDUCTION AND RECYCLING**

**~~8.18.350 - Plastic Film Voluntary Phase Out Period.~~**

~~The City encourages the immediate, voluntary phase out of plastic film shopping and drycleaning bags used at retail establishments within the City, that is neither returnable, nor made with a significant amount of post-consumer recycled material.~~

~~(Ord. 1198 C.S., 1993.)~~

**~~8.18.360 - Returnable and Recyclable Plastic Film Shopping and Drycleaning Bags.~~**

~~A. On and after January 1, 1995 at least 25% by volume of each retail establishment's shopping and/or drycleaning bags provided to customers shall be returnable or recyclable.~~

~~B. On and after January 1, 1997 at least 50% by volume of each retail establishment's shopping and/or drycleaning bags provided to customers shall be returnable or recyclable.~~

~~(Ord. 1198 C.S., 1993.)~~

**~~8.18.370 - Plastic Film Reporting Requirements.~~**

~~A. On and after January 1, 1995 all retail establishments providing shopping and/or drycleaning bags to customers shall maintain a written statement from bag suppliers or manufacturers specifying:~~

~~1. The identity of the bag manufacturer.~~

~~2. Whether the bag is returnable.~~

~~3. Whether the bag is recyclable.~~

~~4. The minimum amount of post-consumer recycled material in the bag material.~~

~~The written statement shall be made available to any person upon request.~~

~~B. It shall be unlawful for any bag manufacturer or retail establishment to make any misstatement of material fact to the City Manager or his/her designee regarding the returnable or recyclable nature of the bag material.~~

~~C. A retail establishment shall maintain written records evidencing its compliance with this Chapter.~~

~~D. A retail establishment shall confirm its compliance with this Chapter on its annual business license renewal form.~~

~~E. All statements and documents required by this Chapter shall be made available for inspection by the City Manager or his/her designee.~~

~~(Ord. 1198 C.S., 1993.)~~

#### ~~8.18.380 — Plastic Film Packaging Exemptions.~~

~~The City Manager or designee may exempt plastic film packaging material from the provisions of this Chapter for a 1-year period, renewable annually, upon proper written application and a showing of undue hardship or a showing that no appropriate substitute packaging is available. Such application shall include a list of all packaging suppliers or manufacturers contacted regarding the availability of substitute packaging.~~  
~~(Ord. 1198 C.S., 1993.)~~

### SECTION 3.

Title 8 of the Martinez Municipal Code is hereby amended to add Chapter 8.23 to read as follows:

#### **CHAPTER 8.23 CARRYOUT BAGS**

##### **8.23. Carryout Bags**

8.23.010 Definitions.

8.23.020 Plastic Carryout Bags Prohibited.

8.23.030 Permitted Bags.

8.23.040 Regulation of Recycled Paper Carryout Bags for Retail Establishments.

8.23.050 Use of Reusable Bags.

8.23.060 Inspection

8.23.070 Enforcement.

### 8.23.010. Definitions.

For the purposes of this chapter only, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:

- a) "Carryout Bag" means any bag, including a Plastic Bag, provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food, merchandise, or other goods out of a Retail Establishment or a Public Eating Establishment. Carryout Bags do not include Product Bags or plastic garment bags.
- b) "Customer" means any person purchasing goods from a Retail Establishment or a Public Eating Establishment.
- c) "Inspector" means an individual designated by the City Manager to conduct any inspections required or permitted under this Chapter.
- d) "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment or Public Eating Establishment, which may include, but is not limited to, the owner of a Retail Establishment or a Public Eating 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. The term "Plastic Bag" includes compostable and biodegradable bags but does not include Reusable Bags, Recycled Paper Carryout Bags, Produce Bags, or Products Bags.
- g) "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.

- h) "Prepared Food" means foods or beverages which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed, other than heating. Prepared food does not include any raw, uncooked meat product or fruits or vegetable which are chopped, squeezed or mixed.
- i) "Produce 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.
- j) "Product Bag" means a bag integrated into the packaging of the product or a bag used (1) to hold prescription medication dispensed from a pharmacy; or (2) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled paper Carryout Bag (examples include small paper bag for greeting cards, paper bags to protect Glass Bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, etc.) (3) plastic garment bags.
- k) "Public Eating Establishment" means a restaurant, take-out food establishment, or any other business that received 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- l) "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purposes 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.
- m) "Recycled Paper Carryout Bag" means a paper bag 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 word "Recyclable" in a highly visible manner on the outside of the bag; and (4) and displays the percentage of Postconsumer Recycled Material used. Recycled Paper Carryout Bags do not include Produce Bags or Product Bags.

- n) "Retail Establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to a Customer; and is located within or doing business within the geographical limits of the City of Martinez. Retail Establishment does not include Nonprofit Charitable Reuser organization.
- o) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all 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; (2) is machine washable or capable of being cleaning and disinfected; (3) 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; and (4) if made of plastic, a minimum of 2.25 mils thick.
- p) 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.

**8.23.020 Plastic Carryout Bags Prohibited.**

Effective January 1, 2015, no Retail Establishment or Public Eating Establishment shall provide any Carryout Bag to a Customer except as provided in this Chapter.

**8.23.030 Permitted Bags.**

All Retail Establishments or Public Eating 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 Chapter prohibits Customers from using bags of any type that they bring to the Retail Establishment or Public Eating Establishment themselves or from carrying away goods that are not placed in a bag.

**8.23.040 Regulation of Recycled paper Carryout Bags for Retail Establishments.**

1. Any Retail Establishment that provides a Recycled Paper Carryout Bag to a Customer must charge the Customer for each bag provided, except as otherwise as exempted in paragraph 4 below.
2. Except as exempted in paragraph 4 below, the minimum charge per recycled paper Carryout Bag will initially be ten cents (\$0.10). The City Manager may increase the minimum charge up to no more than twenty-five center (\$0.25) if he or she finds the amount should be increased to appropriately disincentivize consumers from electing to use Recycled Paper Carryout Bags. All collected monies will be retained by the Retail Establishment.
3. 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.
4. All Retail Establishments must 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 the Supplemental Food Program Pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutional Code, the State Department of Social Security's Food Stamp program, other government-subsidized purchase programs for low income residents.

**8.23.050 Use of Reusable Bags.**

1. All Retail Establishments must make Reusable Bags available to Customers for purchase. Exemptions will 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.
2. Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags.



#### **8.23.060 Inspection.**

An Inspector shall have the right to enter any Retail Establishment or Public Eating Establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this Chapter.

#### **8.23.070 Enforcement.**

1. The City Manager and Chief of Police or their designees are authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating

violations, issuing citations, and entering the premises of any Retail Establishment or Public Eating Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment or Public Eating Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager, Chief of Police or his/her designee.

2. If any of those individuals specified above determine that a violation of this Chapter has occurred, he/she will issue a written warning notice to the Operator of the retail Establishment or Public Eating Establishment that a violation has occurred and the potential penalties that will apply for future violations.
3. Any Retail Establishment or Public Eating Establishment that violates or fails to comply with any of the Requirements of the Chapter after a written notice has been issued for a previous violation shall be guilty of an infraction punishable as specified in Title 1 of this Code.

**SECTION 4. Severability.** It is the intent of the City Council of the City of Martinez to supplement applicable state and federal law and not to contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**SECTION 5. Effective date.** This ordinance shall become effective 30 days after the date of adoption and shall become operative January 1, 2015.

**SECTION 6. Posting.** At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: \_\_\_\_\_  
Rob Schroder, Mayor

ATTEST: \_\_\_\_\_  
Deputy City Clerk

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**I HEREBY CERTIFY** that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 4<sup>th</sup> day of June, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the 18<sup>th</sup> day of June, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ  
CITY CLERK, CITY OF MARTINEZ