

ORDINANCE NO. ___

ORDINANCE OF THE MILL VALLEY CITY COUNCIL AMENDING TITLE 7 "HEALTH AND SANITATION" OF THE MUNICIPAL CODE ADDING CHAPTER 7.40 "SINGLE-USE DISPOSABLE BAG PROHIBITIONS AND REGULATIONS" TO LIMIT THE PROVISION OF SINGLE-USE CARRYOUT DISPOSABLE BAGS AT SPECIFIED RETAILS STORES AT THE POINT OF SALE

THE CITY COUNCIL OF THE CITY OF MILL VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

WHEREAS, the use of all single use shopping bags (plastic, paper, biodegradable) have severe environmental impacts, including greenhouse gas (GHG) 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 littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds which often confuse single-use plastic bags for a source of food resulting in injury and death to birds and marine animals; 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, there are several alternative to single-use carryout bags readily available in Mill Valley; and

WHEREAS, an important goal of the City is to procure and use sustainable products and services; and

WHEREAS, it is the City's desire to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare including wildlife, all of which increases the quality of life for the Mill Valley community; and

WHEREAS, studies document that banning plastic bags and placing a mandatory charge on paper bags will dramatically reduce the use of both types of bags.

WHEREAS, the Mill Valley City Council has established emission reduction targets to reduce GHG emissions to 2005 levels by the year 2020.

46 **WHEREAS**, the Mill Valley City Council has established a goal of zero waste by 2025
47 whereby no materials are landfilled, but instead fully recycled, repaired or reused by the year
48 2025.

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50 **WHEREAS**, the Mill Valley City Council has declared that single-use carry out bags are
51 an environmental concern.

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53 **SECTION 2.** TITLE 7 (“HEALTH AND SANITATION”) IS HEREBY AMENDED TO
54 INCLUDE NEW CHAPTER 7.40 (“SINGLE-USE DISPOSABLE BAG PROHIBITIONS AND
55 REGULATIONS”) AND NEW SUPPORTING SECTIONS (7.40.010 THROUGH 7.40.100)
56 TO READ AS FOLLOWS:

57
58 Chapters:

59 CHAPTER 7.40 SINGLE-USE DISPOSABLE BAG PROHIBITIONS AND REGULATIONS

60 Sections:

- 61 7.40.010 Definitions.
- 62 7.40.020 Plastic carryout bags prohibited.
- 63 7.40.030 Permitted bags.
- 64 7.40.040 Regulation of recyclable paper carryout bags.
- 65 7.40.050 Use of reusable bags.
- 66 7.40.060 Exempt customers.
- 67 7.40.070 Operative date.
- 68 7.40.080 Enforcement and violation—penalty.
- 69 7.40.090 Severability.
- 70 7.40.100 No conflict with federal or state law.

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Chapter 7.40

Single-Use Disposable Bag Prohibitions and Regulations

7.40.010 Definitions.

The following definitions apply to this Chapter:

- A. "Checkout bag" means a carryout bag intended to convey or protect goods, products or packaged food products provided by a store to a customer at the point of sale.
- B. "Customer" means any person purchasing goods from a store.
- C. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- D. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags or product bags.
- E. "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.
- F. "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items, such as bulk foods to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.
- G. "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.
- H. "Recyclable 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%) post-consumer recycled material; (3) is capable of composting consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City of Mill Valley; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word "Recyclable" in a highly visible manner on the outside of the bag.
- I. "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; (2) has a minimum volume of 15 liters; (3)

109 is machine washable or is made from a material that can be cleaned or disinfected; (4) does not
110 contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or
111 on a tag that is permanently affixed to the bag, the name of the manufacturer, the location
112 (country) where the bag was manufactured, a statement that the bag does not contain lead,
113 cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer
114 recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.

115 J. "Single-Use Carryout Bag" means a bag made of plastic, paper, or other material, that is
116 provided by a store to a customer at the point of sale that is not a reusable bag and does not meet
117 the requirements of a reusable bag. A "single use carryout bag" does not include a or "product
118 bag" or a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of
119 Division 2 of the California Business and Professions Code to a customer purchasing a
120 prescription medication.

121 K. "Store" or "retail store" means any of the following retail establishments located within the
122 City of Mill Valley that is:

123 1. A full-line, self-service retail store with gross annual sales of two million
124 dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or
125 nonfood items and some perishable items.

126 2. A store of at least 10,000 square feet of retail space that generates sales or use
127 tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
128 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation
129 Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with
130 Section 4000) of Division 2 of the Business and Professions Code; or

131 3. A drug store, pharmacy, supermarket, grocery store, convenience food store,
132 foodmart, or other entity engaged in the retail sale of a limited line of goods that
133 includes milk, bread, soda, and snack foods, including those stores with a Type
134 20 or 21 license issued by the Department of Alcoholic Beverage Control.

135 **7.40.020 Plastic carryout bags prohibited.**

136 A. No store shall provide to any customer a plastic carryout bag.

137 B. This prohibition applies to bags provided for the purpose of carrying away goods from the
138 point of sale and does not apply to product bags.

139 **7.40.030 Permitted bags.**

140 All stores shall provide or make available to a customer only recyclable paper carryout bags or reusable
141 bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms
142 of this Chapter. Nothing in this Chapter prohibits customers from using bags of any type that they bring to
143 the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags
144 provided by the store.

146 **7.40.040 Regulation of recyclable paper carryout bags.**

147 A. Any store that provides a recyclable paper carryout bag to a customer must charge the
148 customer at least five cents (\$0.05) for each bag provided, except as otherwise provided in this
149 Chapter.

150 B. The Mill Valley City Council may increase the five cent (\$0.05) minimum charge by
151 Resolution.

152 C. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge
153 required in Subsection A, except as otherwise provided in this Chapter.

154 D. All stores must post signage clearly indicating the per bag charge for recyclable paper carryout
155 bags.

156 E. All stores must indicate on the customer receipt the number of recyclable paper carryout bags
157 provided and the total amount charged for the bags.

158 F. All monies for recyclable paper bags under this Chapter shall be collected by the store.

159 **7.40.050 Use of reusable bags.**

160 A. All stores shall make reusable bags available for purchase by a customer for at least five cents
161 (\$0.05) for each bag provided, except as otherwise provided in this Chapter.

162 B. The Mill Valley City Council may increase the five cent (\$0.05) minimum charge by
163 Resolution.

164 C. A store may provide reusable bags to customers at no cost until six (6) months after the
165 effective date of the ordinance. On and after six (6) months after effective date of the ordinance, a
166 store may provide reusable bags to customers at no cost only when combined with a time-limited
167 store promotional program. Such events shall not exceed a total of 60 days within any
168 consecutive 12-month period.

169 D. Each store is strongly encouraged to educate its staff to promote reusable bags and to post
170 signs encouraging customers to use reusable bags.

171 E. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge
172 required in Subsection A, except as otherwise provided in this Chapter.

173 F. All stores must post signage clearly indicating the per bag charge for reusable bags.

174 G. All stores must indicate on the customer receipt the number of reusable bags provided and the
175 total amount charged for the bags.

176 H. All monies for reusable bags under this Chapter shall be collected by the store.

177 **7.40.060 Exempt customers.**

178 All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper
179 carryout bags or both, at the store's option, to any customer participating either in the California Special

180 Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with
181 Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or in the
182 Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of
183 Division 9 of the Welfare and Institutions Code.

184 **7.40.070 Operative date.**

185 This Chapter shall become operative thirty days after its effective date for stores defined in Section
186 7.40.010. This Chapter is effective 30 days after adoption, with enforcement of the ordinance sixty (60)
187 days after adoption.

188 **7.40.080 Enforcement and violation—penalty.**

189 A. The City Manager or his or her designee shall have primary responsibility for enforcement of
190 this Chapter. The staff designee is authorized to promulgate regulations and to take any and all
191 other actions reasonable and necessary to enforce this Chapter including, but not limited to,
192 investigating violations, issuing fines and entering the premises of any store during business
193 hours.

194 B. If the City Manager or his or her designee determines that a violation of this Chapter has
195 occurred, he/she will issue a written warning notice to the operator of a store that a violation has
196 occurred and the potential penalties that will apply for future violations.

197 C. Any store that violates or fails to comply with any of the requirements of this Chapter after a
198 written warning notice has been issued for that violation shall be guilty of an infraction.

199 D. Violations of this ordinance shall be punishable based on the fines established below, and as
200 amended from time to time by City Council resolution:

Violations	# of Scanners (at Check-Out/Point of Sale)		
	1-3	4-9	10 or more
First	Written Warning Notice		
Second	\$135.00	\$200.00	\$220.00
Third	\$185.00	\$250.00	\$270.00
Fourth	\$270.00	\$400.00	\$440.00
Fifth	Administrative Civil Penalty or Referral to DA		

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202 E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

203 F. Any store operator who receives a written warning notice or fine may request an administrative
204 review of the accuracy of the determination or the propriety of any fine issued, by filing a written
205 notice of appeal with the City Manager no later than 30 days after receipt of a written warning
206 notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and
207 any statements and evidence, including copies of all written documentation and a list of any

208 witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal
209 will be heard by the City Manager. The City Manager or his or her designee will conduct a
210 hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on
211 a later date if agreed upon by the appellant and the City Manager, and will give the appellant 10
212 days prior written notice of the date of the hearing. The City Manager or his or her designee may
213 sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision.
214 The City Manager will have the power to waive any portion of the fine in a manner consistent
215 with the decision. The decision of the City Manager is final and effective on the date of service of
216 the written decision, is not subject to further administrative review, and constitutes the final
217 administrative decision.

218 **7.40.090 Severability.**

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

225 **7.40.100 No conflict with federal or state law.**

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

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229 **SECTION 3.** Any provision of the Mill Valley Code or appendices thereto inconsistent with the
230 provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or
231 modified to that extent necessary to effect the provisions of this Ordinance.

232 **SECTION 4.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason
233 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
234 shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares
235 that it would have passed this Ordinance and each and every section, subsection, sentence, clause or
236 phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance
237 would be subsequently declared invalid or unconstitutional.

238 **SECTION 5.** The City of Mill Valley finds that there is no possibility that the implementation
239 of this Ordinance will have significant effects on the environment.

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241 Pursuant to 14 California Code of Regulations, Chapter 5, Article 19, Sections 15307 and 15308,
242 this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA)
243 in that the City Council of the City of Mill Valley, acting as a regulatory agency, is exempt from
244 actions taken to protect natural resources (15307) and the environment (15308).

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246 **SECTION 6.** This Ordinance shall be effective 30 days following its adoption by the City
247 Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published
248 in accordance with Section 36933 of the Government Code of the State of California with the
249 names of the City Councilmembers voting for and against it.

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251 **INTRODUCED** at a regular meeting of the City Council of the City of Mill Valley on the ____
252 day of _____, 2013 and

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254 **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Mill Valley
255 on this ____ day of September, 2013, by the following vote:

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257 AYES:
258 NOES:
259 ABSENT:

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Andrew Berman, Mayor

266 ATTEST:

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268 _____
Kelsey Rogers, City Clerk

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RESOLUTION NO. 11-51

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILL VALLEY
DECLARING SINGLE-USE CARRYOUT BAGS
AN ENVIRONMENTAL CONCERN**

WHEREAS, the Marin Hazardous and Solid Waste Joint Powers Authority (JPA) has determined that paper and plastic single-use carryout bags are of concern to the environment because of their one time use; and

WHEREAS, litter collection for beaches, highways, cities and counties cost the state \$303.2 million each year; plastics make up about 10% of Marin's waste stream and account for visual blight, environmental damage, and cleanup costs; and

WHEREAS, Single-use plastic bags are the second most common item found in statewide beach clean up days; and

WHEREAS, the problems resulting from all types of plastics in the environment effects the world beyond the City of Mill Valley. City of Mill Valley land-based debris, especially bags, packaging and single-use disposable products, are conveyed through storm drains to local creeks, into the San Francisco Bay and into the Pacific Ocean, endangering marine and wildlife; and

WHEREAS, the City of Mill Valley is dedicated to achieving the Zero Waste goal set forth by the JPA.

NOW, THEREFORE, BE IT RESOLVED that the Mill Valley City Council hereby determines the following:

- The City of Mill Valley strongly encourages all retailers to provide an incentive for customers who bring their own bag.
- The City of Mill Valley encourages citizens to use reusable bags for purchases at retailers.
- The City of Mill Valley requires the use of recyclable or compostable takeout food containers.
- The Mill Valley City Council is committed to the consideration of the Ban on Single-Use Plastics similar to the Ordinance passed by the County of Marin.

PASSED AND ADOPTED at the regular meeting of the City Council of the City of Mill Valley on the 21st day of November, 2011, by the following vote:

AYES: Councilmembers Berman, Lion, Wachtel

NOES: None

ABSENT: Councilmembers Marshall, Moulton-Peters


Kenneth R. Wachtel, Mayor

ATTEST: 
Kelsey Rogers, City Clerk/Administrative Analyst

ATTACHMENT 2