

ORDINANCE NO. 2014-___

**AN ORDINANCE OF THE CITY OF NEVADA CITY ADDING
CHAPTER 8.34 TO BE ADDED TO THE NEVADA CITY MUNICIPAL CODE
RESTRICTING USE OF SINGLE-USE CARRYOUT BAGS**

WHEREAS, the use of single-use carryout bags by consumers at retail establishments results in unnecessary negative impacts on the environment and reusable bags are readily available and provide a cost effective alternative to single-use bags; and

WHEREAS, the manufacturing and distribution of single-use carryout bags requires the utilization of natural resources and energy often resulting in the generation of pollution and greenhouse gas emissions; and

WHEREAS, single-use plastic carryout bags are difficult to recycle and often end up in landfills or as roadside litter impacting storm drains, polluting rivers, streams and lakes and polluting soils as these bags photo-degrade; and

WHEREAS, single-use paper bags are currently accepted in local recycling programs however require significant resources to manufacture and recycle and should only be made available if the bag is purchased for a charge and made of a minimum 40% post-consumer recycled content, containing no old-growth fiber; and

WHEREAS, all single-use carryout bags provided by retail establishments contribute to the generation of waste and in order to achieve waste reduction goals as mandated and directed by the state of California it is necessary to adopt policies that focus on waste prevention, reduction and reuse; and

WHEREAS, the City of Nevada City Council does, accordingly, find and declare that it should restrict the distribution of single use carry-out bags:

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nevada City as follows:

SECTION I:

There is hereby adopted and added to the Nevada City Municipal Code, a new Chapter 8.34, to read as set forth in Exhibit "A", attached hereto and incorporated herein by such reference.

SECTION II:

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 the Ordinance. The City Council of the City of Nevada City 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 III:

This Ordinance shall become effective thirty (30) days after the adoption date thereof and within fifteen (15) days of the passage of this Ordinance, the City Clerk shall publish this Ordinance in The Union, a newspaper of general circulation.

PASSED AND ADOPTED at a regularly scheduled meeting of the City Council of Nevada City held this ___ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sally Harris, Mayor

ATTEST:

Niel Locke, City Clerk

EXHIBIT "A"

Chapter 8.34 – USE OF SINGLE-USE CARRYOUT BAGS

Sections:

8.34.020 – Definitions

8.34.030 – Implementation date

8.34.040 – Carryout bag regulations

8.34.050 - Exemptions

8.34.060 – Record keeping and inspections

8.34.070 - Enforcement

8.34.020- Definitions

For the purpose of this chapter, the following definitions shall apply to the capitalized terms unless the context clearly indicates or requires a different meaning:

“Customer” means any person obtaining goods from a retail establishment.

“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 material and received more than fifty percent (50%) of its revenues from the handling and sale of those donated goods or materials.

“Post-Consumer Recycled Content” means material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post-Consumer Recycled Content does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

“Prepared Food” means foods or beverages which are prepared on the premises and which require no further preparation to be consumed. Prepared Food for purposes of this chapter does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

“Recycled Content Paper Bag” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure from a Retail Establishment 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 and is one hundred percent recyclable.

“Restaurant” means a public eating establishment, take-out food establishment, catering truck, or any other business that receives ninety percent (90%) or more of its revenue from the sale of prepared food to be eaten on or off its premises.

“Retail Establishment” means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal items of any kind, directly to a customer. Retail Establishment includes, without limitation, any grocery store, department store, hardware store, pharmacy, liquor store, Restaurant, catering truck, convenience store, and any other retail store or vendor that is located within or doing business within the geographical limits of the City of Nevada City.

“Reusable Bag” means either a bag made of cloth or other machine washable fabric, or a durable plastic bag that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse and meets the following standards: (1) has a minimum volume of 15 liters or 4 gallons; (2) is machine washable or capable of being cleaned and disinfected; (3) does not contain lead, cadmium, or any other heavy metal in toxic amounts in accordance with State and Federal standards; (4) has manufacturer information available at the retail source or printed on the bag or tag affixed to the bag the identification of the manufacturer and country where manufactured with the statement that the bag does not contain any heavy metal toxic amounts and the amount of postconsumer recycled material used.

“Single-Use Carryout Bag” means a bag made of paper, plastic, biodegradable, compostable plastic or similar materials other than a Reusable Bag, provided at the check stand, cash register, and point of sale or other point of departure from a Retail Establishment, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. “Single-Use Carryout Bags” for purposes of this chapter do not include bags which form part of a product’s packaging or bags provided for wrapping products to be placed in a Reusable Bag or Recycled Content Paper Bag, including, but not limited to, bags provided to:

1. transport prepared food, produce, bulk items such as loose beads or small hardware items, bulk food or meat from a department within a store to the point of sale;
2. protect artwork, dry cleaning or similar products subject to damage when transporting;
3. hold prescription medication dispensed from a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code; or
4. segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag.

8.34.030- Implementation date

This ordinance shall take effect January 1, 2015.

8.34.040- Carryout Bag Regulations

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 from a Retail Establishment for the purpose of transporting food or merchandise out of the establishment, except as provided in this section.

B. A Retail Establishment that sells perishable or nonperishable food and or beverages primarily for consumption off premises including food marts, liquor/beverage stores, bars with off sale license, pharmacies and similar establishments may make available for sale to a Customer a Recycled Content Paper Bag or a Reusable Bag for a minimum price of ten cents (\$0.10). No Retail Establishment shall provide a Customer with a credit, rebate, or refund of this charge. The sale of Recycled Content Paper Bags or a Reusable Bag is considered exempt from sales tax subject to conformance with state law and any direction provided by the State Board of Equalization.

C. No Retail Establishment may make available for sale a Recycled Content Paper Bag or Reusable Bag unless the price of the Recycled Content Paper Bag and Reusable Bag is separately itemized on the sales receipt.

D. No person shall distribute a Single Use Plastic Carryout Bag at any City Facility, City managed concession, City sponsored event, or City permitted event including outdoor markets unless otherwise permitted pursuant to Section 8.34.050.

E. Nothing in this chapter prohibits Customers from using bags of any type that they bring to a Retail Establishment themselves or from carrying away goods that are not placed in a bag at point of sale, in lieu of using bags provided by the establishment.

8.34.050- Exemptions

A. The following are exempt from complying with the provisions of Section 8.34.040 except for subdivision 8.34.040A :

1. A Retail Establishment that does not sell food or beverages for consumption off premises may provide a Reusable Bag or Recycled Content Paper Bag at no charge.

2. Until January 1, 2016, Single Use Plastic Carryout Bags may be provided to customers by Restaurants for the purpose of safeguarding public health and safety during the transport of prepared take-out foods and prepared liquids intended for consumption away from the

Restaurant's premises. After January 1, 2016, the City Council shall review this exemption and may, by resolution apply the Carryout Bag restrictions as contained in Section 8.34.040.

3. Retail Establishments whose carryout bags are used as gift wrap or are for small items such as cards, gifts, books, nails, etc. may offer a small paper bag (under .5 cubic feet or 216 cubic inches) for no charge.

4. A Nonprofit Charitable Reuser who sells and promotes the use of Reusable Bags and offers a discount when customer brings own bag.

5. A Retail Establishment as described in Section 8.34.040 (B) may provide Recycled Content Paper Bags and Reusable Bags at no charge to customers who participate in the California Special Supplement Food Program for Women, Infants, and Children; the California Supplemental Food Program; and or the Calfresh Program.

B. The City Manager may exempt a Retail Establishment from the provisions of Section 8.34.040 of this chapter for a period of up to six months, upon the Retail Establishment furnishing written evidence that the enforcement of such provisions would create an undue hardship or practical difficulty not generally applicable to other Retail Establishments in similar circumstances. The request for a temporary exemption must include documentation showing factual support for the claimed exemption which may be approved in whole or in part. The City may adopt a fee schedule to charge for the actual cost of staff time to process the exemption.

8.34.060- Record keeping and inspection

Every Retail Establishment who is required to charge for distributing Recycled Content Paper Bags shall be required to maintain a form of record keeping related to the sale of any Recycled Content Paper Bag or plastic Reusable Bag by the Retail Establishment. The records shall be available for review by a City representative during regular business hours for the purpose of determining whether the Retail Establishment is complying with the terms of this ordinance.

8.34.070- Violation—Penalty

Any Retail Establishment and the owner thereof violating any of the provisions of this chapter shall be guilty of an infraction, and, upon conviction thereof, shall be punishable by the maximum penalty established by state law, with the current penalty being a fine not exceeding one hundred dollars (\$100.00) for the first conviction, a fine not exceeding two hundred dollars (\$200.00) for the second conviction within one (1) year, and a fine not exceeding five hundred dollars (\$500.00) for each additional conviction within one (1) year.