

*The Retail and Food Service Establishment Checkout Bag Requirements
Ordinance was adopted by Palo Alto City Council on May 6, 2013.*

**Ordinance of the Council of the City of Palo Alto Amending Chapter 5.35 of
the Palo Alto Municipal Code Regarding Retail and
Food Service Establishment Checkout Bag Requirements**

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings. The City Council finds as follows:

- (a) Single use plastic bags have environmental effects as many of these bags are conveyed across land or through storm drains into local creeks, the San Francisco Bay and into the Pacific Ocean. Studies have shown that 70% of the litter found in storm drains and at clean up events is plastic (bags, packaging, single-use disposable products).
- (b) Plastic bags that enter the marine environment have been found to adversely impact many wildlife species that ingest or become entangled in them. Paper bags tend to break down faster and do not pose the same risks for ingestion and entanglement.
- (c) Eighty percent of ocean debris originates from land. Plastic debris does not completely biodegrade in the marine environment; instead plastics break down into smaller and smaller pieces, absorbing toxins, which in turn harm marine animals when they are mistaken for food. The Pacific Ocean contains a huge accumulation of plastic debris. Some scientists estimate that the density of plastic can be as great as one million pieces of plastic per square mile and plastic debris has increased over 100 fold in the past 40 years.
- (d) Plastic and paper checkout bags represent an unnecessary use of a nonrenewable resource. Reusable bags represent the sustainable alternative to single-use bags of all types, because they consume less resources overall and produce less waste.
- (e) Even with the emphasis on recycling of plastics in the last several decades, the plastic bag recycling rate in California as of 2008 remains at approximately five percent or less, according to the California Integrated Waste Management Board.
- (f) The City discourages the use of all types of single-use checkout bags, because single-use bags consume more resources and produce more waste than reusable bags. However, plastic bags are the least desirable type of all single-use bags, because they consume a nonrenewable resource, degrade very slowly and harm creek and marine life. It is the City's intent to address all types of single-use checkout plastic bags, including compostable and biodegradable ones, because all types consume non-renewable resources and can harm creek and marine life.

- (g) Expanding the current ordinance supports the City's goal of Zero Waste by 2021 by reducing distribution of both plastic and paper bags. Ordinance expansion would reduce residuals contamination in municipal compost. A majority of compost contamination is comprised of plastic film and must be disposed as garbage.
- (h) Paper bags are more successfully recycled than plastic bags given current technologies. Therefore, diverting paper bags from landfill disposal is more attainable than it is for plastic bags. However, recyclable paper checkout bags do cause negative environmental impacts such as air, land and water pollution during resource extraction, manufacturing, transportation and ultimately in their disposal as even recycling paper bags consumes energy and causes pollution.
- (i) Reusable bags are considered worldwide to be the best option to reduce waste and litter, protect wildlife and conserve resources. Reusable bags have lower associated greenhouse gas emissions than single-use bags and are readily available and affordable for the customer.
- (j) In 2012, despite an existing ban on single use plastic bags in grocery stores over 10,000 square feet, approximately 350 bags were found in the lower Palo Alto watershed. 130 of these bags were found on streets and in storm drains by a small number of volunteers during a one month tally, and an additional 220 plastic bags were removed from Adobe and Matadero Creeks during annual volunteer creek clean-up events.
- (k) Given public awareness of the harm caused by single-use plastic bags, one-third of Palo Alto food establishments already use paper bags exclusively to carry home food, and have voluntarily eliminated the use of single-use plastic bags without harm or public complaint. This includes the full range of food establishments from take-out to fine dining establishments.
- (l) Despite the positive impacts of the existing ordinance approximately fifty-seven percent of combined grocery store and pharmacy checkout bags in Palo Alto are single-use paper or plastic based on a 2012 survey. Therefore, further incentives are needed to decrease single-use checkout bags.
- (m) The City has given away more than 14,500 reusable checkout bags to Palo Alto residents to encourage their use.
- (n) Many cities in Santa Clara, San Mateo, San Francisco and Alameda counties in connection with single-use bag ordinances have initiated charges on single-use paper bags in order to offset the cost to retailers of this program and as an additional incentive for customers to use their own reusable bags.

- (o) Local cities are required by the Municipal Regional Permit (MRP) for storm water to reduce trash by 40% by 2014, 70% by 2017 and 100% by 2022, with cities implementing plastic bag bans as one of the actions to achieve these requirements. Palo Alto’s short term trash reduction plan complying with the MRP is claiming a 6% reduction of trash with the current single use bag ban, however, cities with more comprehensive bans are claiming 12% reduction, assisting them in meeting this strict requirement in a cost-effective manner.
- (p) Due to the negative environmental effects and the need to comply with regulatory requirements to reduce trash, it is therefore in the best interest of public health, safety, and welfare to restrict single-use bag distribution within the boundaries of the City of Palo Alto.
- (q) It is the intent of the Council to reduce negative impacts of single-use checkout bags through implementation of this Ordinance by continuing the requirement for grocery stores to not provide single-use plastic checkout bags and expanding that requirement to include all Retail Service and Food Service Establishments, while implementing a charge to allow customers to purchase a single-use paper bag or a reusable bag if the customer wants a bag and has not brought a reusable bag.

SECTION 2. Sunset of Ordinance 5032. Ordinance 5032 adding Chapter 5.35 (Retail Sales – Requirement for Paper Checkout Bags and Limited Prohibition on Single-Use Plastic Checkout Bags) to the Palo Alto Municipal Code shall sunset and be of no further force and effect on June 30, 2013.

SECTION 3. New Provisions. Effective July 1, 2013, Ordinance 5032 shall be superseded by a new Chapter 5.35 to read as follows:

Chapter 5.35

Retail and Food Service Establishment Checkout Bag Requirements.

Sections:

- 5.35.010 Definitions
- 5.35.020 Types of Checkout Bags Permitted at Retail Service and Food Service Establishments
- 5.35.030 Checkout Bag Charge for Paper or Reusable Bags at Retail Service Establishments.
- 5.35.040 Operative Dates
- 5.35.050 Exemptions
- 5.35.060 Severability
- 5.35.070 Penalties

5.35.010 Definitions.

- (a) “Checkout Bag” means a bag that is provided by a Retail Establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Checkout Bags do not include Produce or Product bags as defined in this Chapter.
- (b) “Food Service Establishment” means any establishment, located or providing food within the City of Palo Alto, which provides prepared and ready-to-consume food or beverages, for public consumption including but not limited to any Retail Service Establishment, eating and drinking service (as defined in Chapter 18), Take-out service (as defined in Chapter 18), supermarket, delicatessen, restaurant, food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, cart or other sidewalk or outdoor vendor or caterer which provides prepared and ready-to-consume food or beverages, for public consumption .
- (c) “Produce or Product Bag” means:
 - i. any bag without handles provided to a customer to carry produce meats, bulk food, or other food items to the point of sale inside a store;
 - ii. to hold prescription medication dispensed from a pharmacy;
 - iii. to protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a Reusable bag or Recyclable paper checkout bag;
 - iv. a bag without handles that is designed to be placed over articles of clothing on a hanger.
- (d) “Recyclable Paper Checkout Bag” means a paper bag that meets one of the following criteria:
 - i. Pre-Approved Standard. A paper bag that meets all of the following requirements:
 - 1. contains no old growth fiber;
 - 2. is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content;
 - 3. displays the word “Recyclable” on the outside of the bag; and
 - 4. the manufacturer, the location (country) where manufactured and the percentage of post-consumer recycled content in an easy-to-read size font.
 - ii. Alternative Materials. The Director of Public Works or his or her designee is authorized to approve alternate materials or testing methods meeting

this section's requirements provided that the Director or designee finds that the proposed materials or testing standards satisfactorily comply with the intent, quality and effectiveness in order to meet the purposes of this Chapter. The particulars of any approval made by the Director of Public Works or his or her designee under this subsection shall be entered upon the records of the Public Works Department and a signed copy shall be furnished to the applicant.

iii. Alternative Standard. Any other published uniform Recyclable Paper Bag standard as approved by the Director of Public Works or his or her designee.

(e) "Retail Service Establishment" means any establishment providing retail sale, rental, service, processing, or repair of items primarily intended for consumer or household use, including but not limited to the following: groceries, meat, vegetables, dairy products, baked goods, candy, and other food products; liquor and bottled goods, household cleaning and maintenance products; drugs, cards, and stationery, notions, books, tobacco products, cosmetics, and specialty items; flowers, plants, hobby materials, toys, household pets and supplies, and handcrafted items; apparel, jewelry, fabrics, and like items; cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, home furnishing and appliances, art supplies and framing, arts and antiques, paint and wallpaper, carpeting and floor covering, interior decorating services, office supplies, musical instruments, hardware and homeware, and garden supplies; bicycles; mopeds and automotive parts and accessories (excluding service and installation); cookie shops, ice cream stores and delicatessens.

(f) "Reusable Checkout Bag" shall mean a bag with handles that is specifically designed and manufactured for multiple reuse which can be washed or wiped clean and meets all of the following criteria:

- i. Bags with a capacity of 15 liters or greater must meet all of the following requirements:
 1. To confirm durability, bags must meet EcoLogo ATP-001 standards (including future amendments or any successor legislation):
 - a. Capacity Test - minimum of 15 liters
 - b. Dynamic Test - minimum of 5 sets of 300 cycles (1,500 cycles total).
 2. To confirm bag thickness of 2.25 mils thick or greater, bags will be measured according to ASTM D6988-08 or ISO 4593:1993 or ISO

- 4591:1992 standards (for embossed film) (including future amendments or any successor legislation).
3. To confirm the absence of heavy metals causing environmental hazards upon entering the solid waste stream, State methods are to be used for preparing and for testing samples of each unique bag component following the Model Toxics in Packaging Legislation, and;
 4. Is either:
 - a. labeled in an easy-to-read sized font with the name of the manufacturer, the country of origin where manufactured, the material from which it is manufactured, the percentage of post-consumer recycled content, and a statement that the bag does not contain heavy metals, or
 - b. as an alternative, information about the manufacturer, the country of origin where manufactured, the material from which the bag is manufactured, the percentage of post-consumer recycled content, and a statement that the bag does not contain heavy metals can be provided through the reporting requirements set forth under 5.35.030 (d).
- ii. Reusable bags that with a capacity of less than 15 liters must meet all of the following requirements:
1. Is 2.25 mils thick or greater as measured according to ASTM D6988-08 or ISO 4593:1993 or ISO 4591:1992 standards (for embossed film) (including future amendments or any successor legislation).
 2. To confirm the absence of heavy metals causing environmental hazards upon entering the solid waste stream, State methods are to be used for preparing and for testing samples of each unique bag component following the Model Toxics in Packaging Legislation, and;
 3. Is either:
 - a. labeled in an easy-to-read sized font with the name of the manufacturer, the country of origin where manufactured, the material from which it is manufactured, the percentage of post-consumer recycled content, and a statement that the bag does not contain heavy metals, or
 - b. as an alternative, information about the manufacturer, the country of origin where manufactured, the material from which the bag is manufactured, the percentage of post-consumer recycled content, and a statement that the bag does not contain heavy metals can be provided through the reporting requirements set forth under 5.35.030 (d).

- iii. Alternative Materials. The Director of Public Works or his or her designee is authorized to approve alternate materials or testing methods meeting this section's requirements provided that the Director or the designee finds that the proposed materials or testing standards satisfactorily complies with the intent, quality and effectiveness in order to meet the purposes of this Chapter. The particulars of any approval made by the Director under this subsection shall be entered upon the records of the Public Works Department and a signed copy shall be furnished to the applicant.
 - iv. Alternative Standard. Any other published uniform bag standard as approved by the Director of Public Works or his or her designee.
- (g) "Single-Use Plastic Checkout Bag means any bag made predominately of plastic derived from natural gas, petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale which does not meet the definition of a Reusable Checkout Bag.

5.35.020 Types of Checkout Bags Permitted at Retail Service and Food Service Establishments

- (a) Retail Service Establishments within the City of Palo Alto shall provide or make available to a customer only Reusable Bags or Recyclable Paper Checkout Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter.
 - i. Single-Use Plastic bags exempt from the ordinance include those integral to the packaging of the product, Produce or Product Bags, newspaper bags, door-hanger bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste or yard waste bags.
 - ii. Food Service Establishments within Retail Stores must comply with those requirements listed under 5.35.020(b); Food Service Establishments within Retail Service Establishments do not need to comply with the broader Retail Service Establishments requirements of this ordinance.
 - iii. Farmers Markets may provide Produce or Product Bags to hold produce or bulk items. Checkout bag charges for these bags are not required at Farmers Markets unless Checkout Bags used to hold Produce or Product Bags are provided.
- (b) Effective November 1, 2013, Food Service Establishments shall provide or make available to a customer only Recyclable Paper Checkout Bags or Reusable Bags, at

their discretion, for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this Chapter.

- i. Produce or Product Bags without handles may be used at Food Service Establishments to hold containers of food items that are free liquids such as soups or stews that might be susceptible to spilling.
- (c) The City of Palo Alto encourages, but does not require in-store public education and encouragement to customers about the use of reusable bags. In-store education for Retail Service and Food Service Establishments is available at www.cityofpaloalto.org/plastics.
- (d) Nothing in this Chapter prohibits customers from using bags of any type that they bring to the 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.
- (e) A Retail Service or Food Service Establishment may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion. Infrequent and limited time promotions shall not exceed a total of 14 days in any consecutive 12 month period.

5.35.030 Checkout Bag Charge for Paper or Reusable Bags at Retail Service Establishments.

- (a) Effective July 1, 2013, no Retail Service Establishment shall provide a Recyclable Paper Checkout Bag or Reusable Bag to a customer at the point of sale, unless the store charges the customer a checkout bag charge of at least ten cents (\$0.10) per bag to cover the costs of compliance with the ordinance, the actual costs of providing recyclable paper bags, educational materials or other costs of promoting the use of reusable bags.
- (b) Retail Service Establishments shall establish a system for informing the customer of the charge required under this section prior to completing the transaction. This system can include store Clerks inquiring whether customers who do not present their own reusable bag at point of checkout want to purchase a checkout bag.
- (c) The checkout bag charge shall be separately stated on the receipt provided to the customer at the time of sale and shall be identified as the Checkout Bag Charge. Any other transaction fee charged by the Retail Service in relation to providing a Checkout Bag shall be identified separately from the Checkout Bag Charge. The checkout bag charge may be completely retained by the Retail Service and used for public education and administrative enforcement costs.

- (d) Retail Services Establishments shall keep complete and accurate records of the number and dollar amount collected from Recyclable Paper and Reusable Checkout Bags sold each month and provide specifications demonstrating that paper and reusable bags meet the standards set forth in Section 5.35.020 using either the electronic or paper reporting format required by the City. This information is required to be made available to City staff upon request up to three times annually and must be provided within seven days of request. Reporting false information, including information derived from incomplete or inaccurate records or documents, shall be a violation of the Ordinance. Records submitted to the City must be signed by a responsible agent or officer of the establishment attesting that the information provided on the form is accurate and complete.

5.35.040 Delayed Implementation for Food Service Establishments.

All Food Service Establishments shall comply with the requirements of Section 5.35.020 of this Ordinance beginning November 1, 2013.

5.35.050 Exemptions.

- (a) Undue Hardship. The City Manager, or his or her designee, may exempt a Retail Service or Food Service Establishment from the requirements of this Chapter for a period of up to one year, upon sufficient evidence by the applicant that the provisions of this Chapter would cause undue hardship. An undue hardship request must be submitted in writing to the City. The phrase “undue hardship” may include, but is not limited to, the following:
 - i. Situations where there are no acceptable alternatives to Single-Use Plastic Checkout Bags for reasons which are unique to the Retail Service or Food Service Establishment.
 - ii. Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.
- (b) Retail Service Establishments shall not enforce the 10 cent store charge for customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, or in CalFresh, or in the Supplemental Nutrition Assistance Program (SNAP—formerly food stamps). This provision will expire on June 30, 2014.

5.35.060 Severability.

If any provision or clause of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter, and clauses of this Chapter are declared to be severable.

5.35.070 Penalties.

- (a) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.
- (b) Each violation of this Chapter shall be considered a separate offense.
- (c) The remedies and penalties provided in this Section are cumulative and not exclusive.

SECTION 4. CEQA. The Department of Public Works prepared an Environmental Impact Report for this Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment and results in only beneficial or less than significant impacts. The EIR was available for public review beginning November 15 through December 31 and was certified by the City Council on March 11, 2013.

SECTION 5. Severability. If any provision or clause of this Ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter, and clauses of this Chapter are declared to be severable.

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SECTION 6. Effective Date. This Ordinance shall be effective on July 1, 2013.

INTRODUCED: APRIL 15, 2013

PASSED: MAY 13, 2013

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Senior Asst. City Attorney

Mayor

APPROVED:

City Manager

Director of Public Works

Director of Administrative
Services