

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANT HILL ADDING CHAPTER 9.65 TO TITLE 9 TO THE PLEASANT HILL MUNICIPAL CODE PROHIBITING RETAILERS AND PUBLIC EATING ESTABLISHMENTS FROM PROVIDING SINGLE USE PLASTIC CARRYOUT BAGS TO CUSTOMERS, REQUIRING MINIMUM CHARGES FOR RECYCLED CARRYOUT BAGS, AND PROMOTING THE USE OF REUSABLE BAGS BY RETAIL AND PUBLIC EATING ESTABLISHMENT CUSTOMERS

WHEREAS, the use of all single use shopping bags (plastic, paper, biodegradable) has 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 100 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 and public eating establishments 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 or the public eating establishment, as the case may be, 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 and public eating establishments and to promote a shift towards the use of reusable bags by City of Pleasant Hill consumers; and

WHEREAS, the City's 2003 General Plan seeks to protect native species and their habitat (Community Development Goal 22), to conserve natural resources (Community Development Goal 23) and to reduce litter in order to promote a city image that reflects the community's diversity and high quality of life (Community Development Goal 4); 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 Pleasant Hill residents and visitors.

The City Council of the City of Pleasant Hill does ordain as follows:

Section 1. Chapter 9.65 of Title 9 of the Pleasant Hill Municipal Code is hereby added to read as follows:

“Chapter 9.65
CARRYOUT BAGS

Section 9.65.010	Definitions
Section 9.65.020	Single-Use Plastic Carryout Bags Prohibited
Section 9.65.030	Permitted Bags
Section 9.65.040	Regulation of Recycled Paper Carryout Bags for Retail Establishments
Section 9.65.050	Use of Reusable Bags
Section 9.65.060	Exempt Customers
Section 9.65.070	Enforcement

9.65.010 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:

Carryout Bag (Single-Use). 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. Single-Use Carryout Bags do not include Produce Bags or Product Bags.

Customer. Any person purchasing goods from a Retail Establishment or a Public Eating Establishment.

Operator. 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.

Person. Any natural person, firm, corporation, partnership, or other organization or group however organized.

Plastic Bag. 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 Product Bags.

Postconsumer Recycled Material. 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.

Prepared Food. 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 vegetables which are chopped, squeezed or mixed.

Produce Bag. 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.

Product Bag. 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 bulk food, etc.).

Public Eating Establishment. 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.

Recyclable. 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.

Recycled Paper Carryout Bag. 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.

Retail Establishment. 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 Pleasant Hill.

Reusable Bag. 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 cleaned 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, is a minimum of 2.25 mils thick.

9.65.020 Single-Use Plastic Carryout Bags Prohibited.

No Retail Establishment or Public Eating Establishment shall provide to any Customer a Single-Use Carryout Plastic Bag. 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.

No Person shall distribute a Single-Use Carryout Plastic Bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise provided in this Section.

9.65.030 Permitted Bags.

All Retail Establishments and 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 Chapter. 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.

9.65.040 Regulation of Recycled Paper Carryout Bags.

A. Any Retail Establishment that provides a Recycled Paper Carryout Bag to a Customer must charge the Customer for each bag provided, except as otherwise provided in this Chapter.

B. The minimum charge per Recycled Paper Carryout Bag shall initially be ten cents (\$0.10). The City Council may increase the minimum charge up to no more than twenty-five cents

(\$0.25) if it finds the amount should be increased to appropriately discourage consumers from electing to use Recycled Paper Carryout Bags. All collected monies will be retained by the Retail Establishment.

C. 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.

D. All Retail Establishments must keep records of the total number of Recycled Paper Bags provided, the total amount of monies collected for providing Recycled Paper Bags, and a summary of any efforts a Store has undertaken to promote the use of Reusable Bags by Customers in the prior calendar year. Such records must be made available to the City Manager or his/her designee, to review at any time. These records may be kept at the establishment's corporate office.

9.65.050 Use of Reusable Bags.

A. All Retail Establishments must make Reusable Bags available to Customers for purchase. A store may provide Reusable Bags to Customers at no cost when combined with a time-limited store promotional program. Such events shall not exceed a total of 60 days within any consecutive 12-month period.

B. Each Retail and Public Eating Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags.

9.65.060 Exempt Customers.

A Retail Establishment may provide a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Section 2 of Division 106 of the Health and Safety Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with one (1) or more Recycled Paper Bags or Reusable Bags at no cost.

9.65.070 Enforcement.

A. The City Manager, or his/her designee, has primary responsibility for enforcement of this Chapter. The City Manager, or his/her designee, is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce this Chapter.

B. If the City Manager, or his/her designee, determines 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.

C. Any Retail Establishment or Public Eating Establishment that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction and may be subject to administrative citation as outlined in Chapter 1.35 of the Pleasant Hill Municipal Code:

Section 2. CEQA. The City Council finds that the adoption of this ordinance is exempt from CEQA pursuant to the following Guidelines: Section 15061(b)(3), Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources - Class 7), and Section 15308 (Actions by Regulatory Agencies for Protection of the Environment - Class 8). This ordinance constitutes a regulatory action of the City Council to assure the maintenance, restoration, or enhancement of a natural resource involving protection of the environment because it will minimize impacts associated with Single-Use Carryout Bags on the environment of the City and region. Therefore the project is found and determined to be exempt from CEQA pursuant to State CEQA Guidelines Section 15307. Further, this ordinance is a regulatory action of the City Council to assure the maintenance, restoration, enhancement and/or protection of the environment, which does not involve any construction activity or relaxation of any standards allowing environmental degradation. Therefore, as a separate and independent basis, the project also is found exempt from CEQA pursuant to CEQA Guidelines Section 15308. The findings and determinations on exemption from CEQA are, in part, based on the following:

1. This ordinance will reduce single-use carryout bags within the City of Pleasant Hill, thereby reducing the existing and future impacts of single-use carryout bag litter including, but not limited to, the adverse aesthetic impacts of litter.
2. This ordinance will further assure the maintenance, restoration, and/or enhancement of natural resources in the City and region by reducing the amount of potential litter and debris that can affect the biological, botanical, and environmental resources.
3. This ordinance will further assure the maintenance, restoration, enhancement, and/or protection of the environment by reducing trash in the waste stream by encouraging the use of reusable bags and use of recyclable bags.
4. It is determined with certainty that this ordinance has no possibility that the use of reusable bags, the prohibition of single-use carryout plastic bags, and establishment of a paper bag pass through fee will have a significant effect on the environment.

Section 3. Statutory Construction & Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or its application to any person or circumstance, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause,

phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

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

Section 4. This ordinance takes effect 30 days after adoption and shall become operative six (6) months for Retail and Public Eating Establishments from the date it is adopted.

Section 5. Within fifteen days after the passage of this ordinance, the City Clerk shall cause it to be posted in the four places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pleasant Hill held on the 7th day of July, 2014.

ADOPTED and ordered posted at a meeting of the City Council of the City of Pleasant Hill, held on the _____ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

TIM FLAHERTY, Mayor

ATTEST:

PAIGE KREMSER STENRUD, City Clerk

APPROVED AS TO FORM:

JANET COLESON, City Attorney