

ORDINANCE NO. 2013-___

ADDING CHAPTER 5.86, "REUSABLE BAGS," TO TITLE 5, "BUSINESS LICENSES AND REGULATIONS," OF THE SAN MATEO MUNICIPAL CODE

WHEREAS, the County of San Mateo has adopted an ordinance restricting the use of single-use carry-out bags; and

WHEREAS, the City of San Mateo wishes to adopt a similar ordinance; and

WHEREAS, by adopting this Ordinance, the City is authorizing the County to enforce the City's ordinance and retain collected fines; and

WHEREAS, the use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare; and

WHEREAS, the manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions; and

WHEREAS, single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean; and

WHEREAS, single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance;

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL HEREBY ORDAINS THAT:

Section 1. Chapter 5.86, "Reusable Bags," is added to Title 5, "Business Licenses and Regulations," of the San Mateo Municipal Code to read:

Chapter 5.86

REUSABLE BAGS

- Section 5.86.010** **Definitions.**
- Section 5.86.020** **Single-use carry-out bag.**
- Section 5.86.030** **Recordkeeping and inspection.**
- Section 5.86.040** **Violation.**
- Section 5.86.050** **Authorization for County enforcement.**
- Section 5.86.060** **Administrative fines.**

5.86.010 DEFINITIONS.

- (a) "**Customer**" means any person obtaining goods from a retail establishment.
- (b) "**Garment Bag**" means a travel bag made of pliable, durable material, with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

- (c) “**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 of its revenues from the handling and sale of those donated goods or materials.
- (d) “**Person**” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- (e) “**Prepared food**” means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. “Prepared food” does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.
- (f) “**Public eating establishment**” means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.
- (g) “**Recycled paper bag**” means a paper bag provided at the check stand, cash register, point of sale, or other point of departure 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; is one hundred percent recyclable; and has printed in a highly visible manner on the outside of the bag the words “reusable” and “recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.
- (h) “**Retail establishment**” means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the City of San Mateo. “Retail establishment” does not include public eating establishments or nonprofit charitable reusers.
- (i) “**Reusable bag**” means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag that meets the above criteria is also a “reusable bag,” whether or not it has handles or not.
- (j) “**Single-use carry-out bag**” means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. “Single-use carry-out bags” do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag.

5.86.020 SINGLE-USE CARRY-OUT BAG.

- (a) No retail establishment shall provide a single-use carry-out bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section.
- (b) On or before December 31, 2014, a retail establishment may make available for sale to a customer a recycled paper bag or a reusable bag for a minimum charge of ten cents.
- (c) On or after January 1, 2015, a retail establishment may make available for sale to a customer a recycled paper bag or reusable bag for a minimum charge of twenty-five cents.
- (d) Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.
- (e) A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals; a customer participating in the California Special Supplement 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; 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; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

5.86.030 RECORDKEEPING AND INSPECTION. Every retail establishment shall keep complete and accurate records or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment for a minimum period of three years from the date of purchase and sale, which record shall be available for inspection at no cost to the City or County during regular business hours by any City or County employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information, including incomplete records or documents, to the City or the County shall be a violation of this section.

5.86.040 VIOLATION. It shall be unlawful to violate this Chapter.

5.86.050 AUTHORIZATION FOR COUNTY ENFORCEMENT. In addition to the City's enforcement mechanisms set forth in Title 1 of this Code, the City of San Mateo authorizes the County of San Mateo's Environmental Health Division to enforce this Chapter of the Municipal Code, including, without limitation, the authority to hold hearings, issue administrative fines, and retain collected fines.

5.86.060 ADMINISTRATIVE FINES. In the event that the County enforces this Ordinance on the City's behalf within the City limits, the following administrative fine provisions apply:

- (a) Grounds for Fine. A fine may be imposed upon findings made by the San Mateo County Director of the Environmental Health that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.
- (b) Amount of Fine. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative fine as follows:
 - (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
 - (3) A fine not exceeding five hundred dollars (\$500.00) for the third and subsequent violations;
 - (4) Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the San Mateo County Director of the Environmental Health contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the San Mateo County Director of the Environmental Health shall be based upon a finding that the above-listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the San Mateo County Director of the Environmental Health after the hearing, either the City or the County is authorized to bring an action to collect any unpaid administrative fine.

Section 2. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be

deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 3. ENVIRONMENTAL REVIEW. In accordance with the California Environmental Quality Act (CEQA), an environmental impact report was prepared by the County of San Mateo, which analyzes the environmental impacts of adopting this ordinance in all cities within the County, including the City of San Mateo. This environmental impact report is available on-line at www.cityofsanmateo.org, and a hard copy is available at San Mateo City Hall, 330 West 20th Avenue. Because the City of San Mateo is the lead agency for purposes of adopting the City's ordinance, the City prepared and circulated a negative declaration "tiering" off of the County's Program Environmental Impact Report in accordance with CEQA Guidelines section 15152. The City's Negative Declaration concluded that adoption of this Ordinance in the city would not result in any significant impacts to the environment.

Section 4. EFFECTIVE DATE. This Ordinance shall take effect 30 days after its adoption.

Section 5. PUBLICATION. This Ordinance shall be published in summary in the Examiner Peninsula Edition, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the Charter and shall be effective 30 days after the date of adoption.