

**ORDINANCE NO. 1930**

**AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, THAT THE CITY COUNCIL OF THE CITY OF SANTA CLARA APPROVE AND CERTIFY A NEGATIVE DECLARATION AND ADD ARTICLE VI (“SINGLE-USE CARRY-OUT BAGS”) TO CHAPTER 13.20 (“STORM DRAINS AND DISCHARGES”) OF TITLE 13 (“PUBLIC SERVICES”) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA” TO PROHIBIT THE USE OF SINGLE-USE CARRY-OUT PLASTIC BAGS**

**BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, single-use carry-out plastic bags contribute to problematic litter because of their lightweight nature, which allows them to be conveyed through the storm drain system into creeks and eventually the bay, where birds and other marine wildlife mistake plastic litter for food;

**WHEREAS**, single-use carry-out plastic bags comprised eight percent (8%) of trash transported via urban runoff into stormdrains according to a study conducted from 2009 to 2012 by the Bay Area Stormwater Management Agencies Association;

**WHEREAS**, single-use carry-out plastic bags no longer have a recycling market and are being disposed of as residual in landfills; and,

**WHEREAS**, on March 18, 2014, City Council directed staff to conduct an Initial Study and pursue a Negative Declaration for a single-use carry-out plastic bag ordinance to require grocery stores, pharmacies and retail stores to stop providing single-use carry-out plastic bags to reduce litter, minimize the harm to wildlife, and improve water quality in Santa Clara creeks and the Southern San Francisco Bay.

**WHEREAS**, pursuant to the California Environmental Quality Act (CEQA), and the regulations implementing the Act, specifically 14 Cal. Code of Regs. § 15070, an Initial Study was prepared which failed to identify any potentially significant effects on the environment. The resulting

Negative Declaration was prepared, distributed and noticed for a 30-day public review and comment of the potential environmental impacts related to the project, beginning June 16, 2014 and concluding on July 16, 2014;

**WHEREAS**, the City received two written comments during that Comment Period which were all supportive of the Ordinance. No written responses to them were necessary;

**WHEREAS**, the City Council has reviewed the Initial Study and Negative Declaration prepared for the project, the City Staff reports pertaining to the Initial Study and Negative Declaration and all evidence received at a duly noticed public hearing on August 19, 2014. All of these documents and evidence are herein incorporated by reference.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**SECTION 1:** That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

**SECTION 2:** That the City Council hereby finds that the Initial Study and Negative Declaration were completed for this project in compliance with CEQA, that there is no substantial evidence that the project and the adoption of this Ordinance will have no significant effect on the environment or negative impacts on the area's resources, cumulative or otherwise, as the impacts fall within the environmental thresholds identified by CEQA, and the City Council hereby adopts the Initial Study and Negative Declaration.

**SECTION 3:** That the City Council hereby designates the Director of Planning and Inspection as the Custodian of Records for the project, and the Planning and Inspection Division at City Hall, 1500 Warburton Avenue, Santa Clara, California, is the location of the documents and other material that constitute the record of proceedings upon which this decisions is based;

**SECTION 4:** That a new Article VI (“Single-Use Carry-Out Plastic Bags”) is added to Chapter 13.20 (“Storm Drains and Discharges”) of Title 13 (“Public Services”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

**“Article VI. Single-Use Carry-Out Plastic Bags**

**13.20.190 Definitions.**

- (a) “Customer” means any person obtaining goods from a retail establishment.
- (b) “Nonprofit Charitable Organization” means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986.
- (c) “Person” means any natural person, firm, corporation, partnership or other organization or group however organized.
- (d) “Prepared Food” means food or beverage which is prepared on the premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which requires no further preparation to be consumed. “Prepared Food” does not include any produce, bulk food or meat department within a Retail Establishment.
- (e) “Public Eating Establishment” means a:
  - (1) Restaurant, take-out food establishment 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; or
  - (2) Department, unit or section located within and operated by a Retail Establishment that generates ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises, and the department, unit or section does not engage in the sale of perishable or nonperishable goods from another department, unit or section within the same Retail Establishment.

(f) “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 (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the word “Recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.

(g) “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 Santa Clara. “Retail Establishment” does not include Public Eating Places, Nonprofit Charitable Organizations, or Farmer’s Markets.

(h) “Reusable Bag” means either a bag made of cloth or 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.

(i) “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 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 produce, prepared food, bulk food or meat from a produce, deli, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (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; (4) to protect clothing or garments after cleaning; or (5) to place personal items for the purpose of security requirements.

**13.20.200 Single-Use Carry-Out Bags prohibited.**

(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 effective December 1, 2014.

(b) On or before December 1, 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) Notwithstanding this Section, no Retail Establishment may make available for sale a Recycled Paper Bag unless the amount of the sale of the Recycled Paper Bag is separately itemized on the sale receipt.

(d) A Retail Establishment may provide 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 or Part 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 or more Recycled Paper Bags at no cost.

**13.20.210 Administrative fine.**

(a) A fine may be imposed upon findings made by the City Manager, his or her designee, or a code enforcement officer, that any Retail Establishment has provided a Single-Use Carry-Out Bag to a Customer in violation of this Chapter.

(b) 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 a third and subsequent violations;

(4) Each instance that a Retail Establishment has provided Single-Use Carry-Out Bags to a Customer constitutes a separate violation.”

**SECTION 5: Savings clause.** The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

**SECTION 6: Constitutionality, severability.** If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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**SECTION 7: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

**PASSED FOR THE PURPOSE OF PUBLICATION** this 19<sup>th</sup> day of August, 2014, by the following vote:

AYES:	COUNCILORS:	Davis, Kolstad, Mahan, Marsalli, and O’Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Gillmor
ABSTAINED:	COUNCILORS:	None

ATTEST:   
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ROD DIRIDON, JR.  
CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None