

ORDINANCE No. NS - 517.77

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING CHAPTER XVII TO DIVISION B11
OF THE COUNTY OF SANTA CLARA ORDINANCE CODE
RELATING TO PROHIBITION OF SINGLE-USE CARRYOUT BAGS**

Summary

This ordinance prohibits the free distribution of paper and plastic single-use carryout bags at retail establishments within unincorporated Santa Clara County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS
AS FOLLOWS:**

Division B11 of Title B of the Ordinance Code of the County of Santa Clara is amended by adding a new Chapter XVII to be numbered and titled and to read as follows:

CHAPTER XVII. SINGLE-USE CARRYOUT BAG BAN

Section B11-508. Findings and Intent.

The Board of Supervisors of the County of Santa Clara does hereby find the following:

- a) The use of Single-use Carryout Bags by consumers at Retail Establishments is detrimental to the environment, public health and welfare.
- b) The manufacture and distribution of Single-use Carryout Bags requires utilization of natural resources and results in the generation of Greenhouse Gas Emissions.
- c) Single-use Carryout Bags contribute to environmental problems, including litter on roadways and in aquatic environments.
- d) Single-use Carryout Bags provided by Retail Establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This chapter is adopted (1) to require Retail Establishments to discontinue the subsidy of Single-use Carryout Bags to consumers and (2) to encourage Retail Establishments to educate their staff to promote Reusable Bags as the best option for checkout bags and (3) to encourage consumers to make informed decisions regarding Single-use Carryout Bag reduction and reuse options.

Section B11-509. Definitions.

For the purposes of this Ordinance, the following words shall have the following meanings:

- a) "Administrator" means the Director of the Department of Agriculture and Environmental Management and his or her designee.

- b) "Public Eating Establishment" means 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.
- c) "Recycled Paper Bag" means a paper bag provided at the point of sale, for the purpose of transporting food or merchandise out of the Retail 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 words "Reusable" and "Recyclable," the name and location (country) of the manufacturer, and the percentage of post-consumer recycled content.
- d) "Retail Establishment" means an establishment that is open to the public and devoted to the retail sale of a commodity or commodities and provides Single-use Carryout Bags to its customers as a result of the sale of a product. Public Eating Establishments are excluded from this definition.
- e) "Reusable Bag" means the following:
 - 1) Until December 31, 2012 a Reusable Bag shall be:
 - (i) Made of cloth or other machine-washable fabric that has handles, or a durable plastic bag that is at least 2.25 mil thick with handles and is specifically designed and manufactured for multiple reuse.
 - (ii) No Reusable Bag shall contain lead, cadmium, or any other heavy metal in toxic amounts. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code.
 - 2) Beginning January 1, 2013, a Reusable Bag shall be:
 - (i) Designed and manufactured to withstand a minimum of 100 uses. For purposes of this paragraph, "uses" means the capability of carrying a minimum of 22 pounds 100 times over a distance of at least 175 feet.
 - (ii) Made from a material that can be cleaned and disinfected.
 - (iii) Have printed on the bag, or on a tag attached to the bag that is not intended to be removed and in a manner visible to the consumer the following information:
 - a) The name of the manufacturer.
 - b) The location (country) where the bag was manufactured.
 - c) A recycling symbol or end-of-life management instructions.
 - d) The percentage of postconsumer recycled material, if any.
 - (iv) Not contain lead, cadmium, or any other heavy metal in toxic amounts. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code.
- f) "Single-use Carryout Bag" means a bag other than a Reusable Bag provided at the point of sale for the purpose of transporting food or merchandise out of the Retail

Establishment. Single-use Carryout Bags do not include bags without handles provided to the Customer intended (1) to transport produce, bulk food or meat from a produce, bulk food or meat department within a Retail Establishment; (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 or as exempted in Section B11-512.

Section B11-510. Restrictions on Single-use Carryout Bags at Retail Establishments.

- a) Retail Establishments are prohibited from providing Single-use Carryout Bags to customers at point of sale except as exempted in Section B11-512.
- b) Retail Establishments may provide only Reusable Bags and/or Recycled Paper Bags to customers at point of sale.
- c) Nothing in this chapter shall preclude Retail Establishments from making Reusable Bags available to customers free of charge until December 31, 2012. Beginning January 1, 2013, Reusable Bags may only be provided free of charge as part of a time-limited store promotion.
- d) Nothing in this chapter shall preclude retail establishments from making Recycled Paper Bags available for sale at the Retail Establishment's cost but no less than \$0.15 to be retained by the Retail Establishment. Retail Establishments are prohibited from providing free Recycled Paper Bags to customers except as exempted in Section B11-512.

Section B11-511. Compliance Date.

All Retail Establishments shall comply with this Ordinance by January 1, 2012.

Section B11-512. Exemptions.

This Ordinance does not apply to:

- a) Plastic or paper bags used by Public Eating Establishments, non-profit organizations and social organizations;
- b) Bags used to protect delivered newspapers;
- c) Notwithstanding any other law, on and after January 1, 2012 a Retail Establishment may provide customers participating in the California Special Supplemental Food Program for Women, Infants, and Children (WIC) and customers participating in the Supplemental Nutrition Assistance Program (SNAP – formerly food stamps) with Reusable Bags or Recycled Paper Bags at no cost at point of sale until December 31, 2014.

Section B11-513. 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 the Chapter, and clauses of this chapter are declared to be severable.

Section B11-514. Compliance Monitoring.

- a) Compliance with this chapter shall be monitored by the Administrator. The Administrator may designate any number of additional persons to monitor and facilitate compliance with this chapter.
- b) The Administrator or other person designated to enforce the provisions of this chapter shall periodically check each Retail Establishment to determine if the Retail Establishment is complying with all sections of this Ordinance. Nothing in this paragraph shall create a right of action in any Retail Establishment or other person against the County or its agents.

Section B11-515. Recordkeeping and Verification.

Every Retail Establishment shall keep complete and accurate records or documents of the purchase of any Recycled Paper Bag by the Retail Establishment, for a minimum period of three (3) years from the date of purchase, which record shall be available for inspection at no cost to the County during regular business hours by any County employee authorized to enforce this chapter. 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 to the County, including incomplete records, shall be a violation of this Section.

Section B11-516. Penalties for a Violation by a Retail Establishment.

- a) In addition to any other penalty authorized by law, an administrative fine shall be imposed if any court of competent jurisdiction determines, or the Administrator finds based on a preponderance of the evidence, after the Retail Establishment is afforded notice and an opportunity to be heard, that the Retail Establishment, or any of the Retail Establishment's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.
- b) Amount of Fine. Each such violation shall be subject to an administrative fine as follows:
 - 1. A fine not to exceed \$100.00 for a first violation within one year;
 - 2. A fine not to exceed \$200.00 for a second violation within one year; and
 - 3. A fine not to exceed \$500.00 for each additional violation within one year.
- c) Waiver of Penalties for First Violation. The Administrator may waive any penalties for a Retail Establishment's first violation of any requirement, condition or prohibition of this chapter, if the Retail Establishment admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Administrator's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- d) Corrections Period. The Administrator shall have discretion to allow a Retail Establishment a period of time to correct any violation of any requirement, condition or prohibition of this chapter. If a Retail Establishment's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.

- e) Appeals. Any penalties imposed under this section may be appealed pursuant to Section B11-517 of this chapter.

Section B11-517. Appeals.

- a) A decision to impose penalties for a violation of this chapter can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be the Administrator, his or her designee, or another individual selected by the County.
- b) All appeals must be in writing, state the grounds asserted for relief and the relief sought, and be filed with the Administrator or his or her designee within 10 calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.
- c) No later than 15 calendar days after receipt of the appeal, the hearing officer shall set an appeal hearing at the earliest practicable time and shall give notice of the hearing to the parties at least 10 calendar days before the date of the hearing.
- d) Neither the provisions of the Administration Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. At the hearing, the hearing officer may admit any evidence, including witnesses, relevant to the determination of the matter. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.
- e) The hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.
- f) After the conclusion of the hearing, the hearing officer shall issue a written decision, which shall be supported by substantial evidence. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6, shall be served upon all parties no later than 20 calendar days following the date on which the hearing closed. Any decision rendered by the hearing officer shall be a final administrative decision.

Section B11-518. Enforcement.

- a) Any violation of this chapter is hereby declared to be a public nuisance.
- b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- c) Violations of this chapter may be remedied by a civil action brought by the County, including but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this chapter, each day on which a violation of this chapter occurs, shall constitute a separate violation of this chapter.
- d) The District Attorney shall have discretion to prosecute violations of this chapter as infractions or misdemeanors.

- e) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

Section B11-519. Effective Date.

This chapter shall become operable 30 days after this ordinance receives final approval from the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:


ABSTAIN:

DAVE CORTESE, President
Board of Supervisors

ATTEST:

MARIA MARINOS
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

 3.22.2011

MARK BERNAL
Deputy County Counsel