

ORDINANCE NO. \_\_\_\_\_

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

AN ORDINANCE ADDING CHAPTER 8.64 TO THE  
SOUTH SAN FRANCISCO MUNICIPAL CODE  
REGARDING REUSABLE BAGS

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NOW THEREFORE, the City Council of the City of South San Francisco does hereby ordain as follows:

SECTION 1. AMENDMENT

The City Council hereby adds Chapter 8.64 "Reusable Bags" to the South San Francisco Municipal Code to read as follows:

**Chapter 8.64 Reusable Bags**

<b>4.114.010</b>	<b>Findings and Purpose</b>
<b>4.114.020</b>	<b>Definitions</b>
<b>4.114.030</b>	<b>Implementation Date</b>
<b>4.114.040</b>	<b>Single-use Carry-out Bag</b>
<b>4.114.050</b>	<b>Recordkeeping and Inspection</b>
<b>4.114.060</b>	<b>Administrative Fine</b>
<b>4.114.070</b>	<b>Severability</b>
<b>4.114.080</b>	<b>Enforcement</b>

**4.114.010 Findings and Purpose**

The City Council finds and determines that:

- (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 in stormdrains, creeks, the bay and the ocean.
- (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 City Council does, accordingly, find and declare that it should restrict the use of single use carry-out bags.

#### **4.114.020 Definitions**

"Customer" means any person obtaining goods from a retail establishment.

"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.

"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.

"Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

"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.

"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.

"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.

"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 South San Francisco. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

"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 may meet the above criteria regardless of whether it has handles or not.

"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.

#### **4.114.030 Implementation Date**

The provisions of this Chapter shall not be implemented until April 22, 2013.

#### **4.114.040 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 only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

(c) On or after January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum 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.

#### **4.114.050 Recordkeeping and Inspection**

Every retail establishment shall keep complete and accurate record 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 San Mateo County Environmental Health Division during regular business hours by any City or San Mateo County Environmental Health Division 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 San Mateo County Environmental Health Division shall be a violation of this Chapter.

#### **4.114.060 Administrative Fine**

(a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the San Mateo County Environmental Health Division, or his or her designee, 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 Director of the San Mateo County Environmental Health Division or his or her designee 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 Director of the Environmental Health Division 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 Director of the San Mateo County Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

#### **4.114.070 Severability**

If any provision of this Chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

#### **4.114.080 Enforcement**

(a) The San Mateo County Environmental Health Division is hereby authorized and directed to enforce the provisions of this Chapter within the geographical limits of the City of South San Francisco.

(b) The authorization granted by subsection (a) of this section, includes, without limitation, the authority to hold hearings and issue administrative fines for violations of this Chapter within the geographical limits of the City of South San Francisco.

(c) Enforcement will begin effective, April 22, 2013.

SECTION 2. SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 3. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall be published once, with the names of those City Councilmembers voting for or against it, in the San Mateo Times, a newspaper of general circulation in the City of South San Francisco, as required by law, and shall become effective thirty (30) days from and after its adoption.

\* \* \* \* \*

Introduced at a regular meeting of the City Council of the City of South San Francisco, held the \_\_\_\_ day of \_\_\_\_\_, 2012.

Adopted as an Ordinance of the City of South San Francisco at a \_\_\_\_\_ meeting of the City Council held the \_\_\_\_ day of \_\_\_\_\_, 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
Krista Martinelli, City Clerk

As Mayor of the City of South San Francisco, I do hereby approve the foregoing Ordinance this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Richard Garbarino, Mayor

RESOLUTION NO. \_\_\_\_\_

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO  
STATE OF CALIFORNIA

**A RESOLUTION MAKING CEQA FINDINGS AS A  
RESPONSIBLE AGENCY FOR ADOPTION OF CHAPTER  
8.64 OF THE SOUTH SAN FRANCISCO MUNICIPAL CODE  
REGARDING REUSABLE BAGS**

WHEREAS, single-use carryout bags constitute a high percentage of litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts; and,

WHEREAS, the City of South San Francisco (“City”) has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags; and,

WHEREAS, adoption of an ordinance regarding reusable bags is considered a “project” for purposes of the California Environmental Quality Act, Pub. Resources Code, §§ 21000, *et seq.* (“CEQA”); and,

WHEREAS, on October 23, 2012 the San Mateo County Board of Supervisors certified a Program Environmental Impact Report (“EIR”) addressing the impacts of an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents (\$.10) per bag; and,

WHEREAS, the County of San Mateo (“County”) ordinance encouraged cities within the County and neighboring the County to adopt similar ordinances; and,

WHEREAS, the County’s EIR specifically analyzed the environmental impacts of 24 cities (18 cities within San Mateo County and 6 cities in Santa Clara County) potentially adopting the County’s ordinance within their respective jurisdictions; and,

WHEREAS, the City intends its proposed Ordinance to fall within the scope of the County’s EIR and has therefore modeled its Ordinance on the County’s ordinance; and,

WHEREAS, the City Council has reviewed and carefully considered the information in the EIR, and makes the findings contained in this Resolution, as an objective and accurate document that reflects the independent judgment and analysis of the City in the discussion of the Ordinance’s environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that based on the entirety of the record before it, which includes without limitation, the California Environmental Quality Act, Public Resources Code §§ 21000, *et seq.* (“CEQA”) and the CEQA Guidelines, 14 California Code of Regulations § 15000, *et seq.*; the Program Environmental Impact Report (“EIR”) that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the County of San Mateo as well as neighboring jurisdictions; all

reports, minutes, and public testimony submitted as part of the County's consideration of the EIR; all reports, minutes, and public testimony submitted as part of the City Council's meeting on November 14, 2012; and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2), the City Council of the City of South San Francisco hereby finds as follows:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The exhibits and attachments are incorporated by reference as part of this Resolution, as if it were set forth fully herein.
3. The documents and other material constituting the record for these proceedings are located at the Planning Division for the City of South San Francisco, 315 Maple Avenue, South San Francisco, CA 94080, and in the custody of Chief Planner, Susy Kalkin.
4. On October 23, 2012, the County of San Mateo County certified a Program Environmental Impact Report ("EIR") that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the County of San Mateo as well as neighboring jurisdictions. The EIR was certified pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*
5. Pursuant to Section 15096 of the CEQA Guidelines, the City of South San Francisco acts as a responsible agency for adoption of this ordinance within the City of South San Francisco. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:
  - A. Prior to reaching a decision on the Ordinance, the city Council considered the environmental impacts of the proposed Ordinance as shown in the EIR; and
  - B. Based on the information and analysis in the EIR, the City Council finds that the proposed Ordinance will not result in any significant effect on the environment. Attached hereto as Exhibit B are findings regarding the less than significant impacts analyzed in the EIR; and
  - C. The city Council finds that there are no feasible alternatives or mitigation measures that would substantially lessen or avoid any significant effect the project would have on the environment.
  - D. None of the conditions in CEQA Guidelines section 15162 or 15163 are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the EIR, is within the scope of the project described in the EIR, and no further environmental review is required.
  - E. A Notice of Determination shall be filed pursuant to CEQA Guidelines

sections 15094 and 15096.

BE IT FURTHER RESOLVED that the City Council of the City of South San Francisco hereby makes the CEQA findings attached as Exhibit B, and has reviewed and considered the environmental effects of the proposed ordinance as shown in the EIR, attached as Exhibit A, as it applies to the City's proposed ordinance that it intends to adopt.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.

\* \* \* \* \*

I hereby certify that the foregoing resolution was adopted by the City Council of the City of South San Francisco at the regular meeting held on the 14th day of November, 2012 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_

City Clerk