

ORDINANCE NO. 11-13 N.S.

**AN ORDINANCE ADDING CHAPTER 9.14 TO THE RICHMOND MUNICIPAL CODE
TO REGULATE THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE
PAPER CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS WITHIN
THE CITY**

Section 1 Findings

WHEREAS, single-use carryout bags have been associated with significant environmental impacts, including greenhouse gas emissions, harm to wildlife, solid waste generation, and constitute a high percentage of litter, which is unsightly and costly to clean up; and

WHEREAS, littering single-use bags can result in blocked storm drains, fouled waterways, and increased marine debris; and

WHEREAS, even properly disposed or recycled single-use bags cause operational problems at solid waste transfer stations, landfills, and recyclables collection and processing facilities; and

WHEREAS, the City of Richmond has a substantial interest in protecting its waterways, environment, taxpayers and ratepayers from the negative impacts from single-use carryout bags; and

WHEREAS, there are several alternatives to single-use carryout bags; and

WHEREAS, studies document that banning single-use plastic bags and charging for single-use paper bags will dramatically reduce the use of both types of bags; and

WHEREAS, the West Contra Costa Integrated Waste Management Authority (“Authority”) has developed a single-use bag reduction model ordinance for potential consideration and adoption by its member agencies, including Richmond; and

WHEREAS, on April 11, 2013 the Authority Board certified an Environmental Impact Report (“EIR”) for its model ordinance and recommended the model ordinance for individual member agency adoption; and

WHEREAS, the City intends this ordinance to fall within the scope of the Authority’s EIR and has, therefore, modeled this ordinance on the Authority’s draft ordinance.

Section 2 Amendment of Municipal Code

Article IX of the Richmond Municipal Code is hereby amended to add a new Chapter 9.14 to read as follows:

Chapter 9.14 Single-Use Bag Ordinance

Sections:

- 9.14.010 - Definitions.
- 9.14.020 - Plastic Carryout Bags Prohibited.
- 9.14.030 - Permitted Bags.
- 9.14.040 - Regulation of Recycled Paper Carryout Bags.
- 9.14.050 - Use of Reusable Bags.
- 9.14.060 - Enforcement and Penalties.

9.14.010 Definitions

The following definitions apply to this ordinance:

- (a) "Customer" means any person purchasing goods from a Retail Establishment.
- (b) "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.
- (c) "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- (d) "Plastic Bag" means 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, which is provided to a Customer at the point of sale. Plastic bags includes: compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags.
- (e) "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.
- (f) "Postconsumer Recycled Material" means 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.
- (g) "Prepared Food" means foods or beverages which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require not 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.
- (h) "Produce Bag" or "Product Bag" means 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.
- (i) "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose 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.
- (j) "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 and 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 words "Reusable and Recyclable" in a highly visible manner on the outside of the bag; (5) and displays the percentage of Postconsumer Recycled Material used; and (6) the name and location of the manufacturer.
- (k) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of 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 at least 2.25 mils thick.
- (l) "Retail Establishment" means any commercial establishment that sells perishable and 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 city limits of the City of Richmond. Retail Establishments does not include Public Eating Establishments.

(m) "Single-Use Carryout 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 Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.

9.14.020 Plastic Carryout Bags Prohibited

No Retail Establishment shall provide a Single-Use Carryout 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 provide in this ordinance.

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.

9.14.030 Permitted Bags

All Retail 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 ordinance. Nothing in this ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

9.14.040 Regulation of Recycled Paper Carryout Bags

(a) Any Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer a minimum of five cents (\$0.05) for each bag provided, except as otherwise provided in the ordinance.

(b) Two years after the effective date of the ordinance, a Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer ten cents (\$0.10) for each bag provided, except as otherwise provided in the ordinance.

(c) All monies collected by a Retail Establishment under this ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:

- (1) Costs associated with complying with the requirements of this ordinance
- (2) Actual costs of providing Recycled Paper Carryout Bags
- (3) Costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of reusable bags, or
- (4) Fund reusable bags giveaways during limited-time store promotions.

9.14.050 Use of Reusable Bags

(a) All Retail Establishments must provide Reusable Bags to Customers, either:

- (1) For sale, or
- (2) At a minimum charge of ten cents (\$0.10) per bag during limited-time store promotions.
- (3) Exemptions would be made for sanctioned reusable bag giveaway events that are intended to promote the use of reusable bags not exceeding a total of ninety (90) days in any consecutive 12-month period.

(b) Each Retail Establishment is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging Customers to use Reusable Bags.

9.14.060 Enforcement and Penalties

(a) The City Manager or his/her designee has primary responsibility for enforcement of this ordinance. The City Manager is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this ordinance, including, but not limited to, investigating violations, issuing fines and entering the premises of any Retail Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager.

(b) Any Retail Establishment in violation of this Chapter shall be guilty of a misdemeanor pursuant to section 1.04.100 of the Richmond Municipal Code. All violations are subject to Richmond's administrative citation process, including first tier administrative fines and appeals as set forth in Richmond Municipal Code Chapter 2.62.

(c) The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

SECTION 3 Compliance with the California Environmental Quality Act

The findings for this Ordinance have been determined to be in compliance with the California Environmental Quality Act (“CEQA”). On April 11, 2013, the West Contra Costa Integrated Waste Management Authority (“Authority”) Board adopted Resolution 13-08 certifying the single use bag reduction Environmental Impact Report that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the Authority, including the City of Richmond, as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and California Code of Regulations, Title 14, Section 15000 et seq. (“CEQA Guidelines”). The EIR is incorporated by reference herein. Pursuant to Section 15096 of the CEQA Guidelines, the City of Richmond acts as a responsible agency for adoption of this ordinance within the City of Richmond. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

- (a) The Final Environmental Impact Report is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations section 15000 et seq., and the public comment period; and
- (b) On the basis of the Initial Study, Notice of Preparation, Final EIR, and public comment received by both the Authority and the City of Richmond, there is no substantial evidence that the project as proposed will have a significant negative effect on the environment; and
- (c) Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the Richmond City Council; and
- (d) None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the Authority’s Final EIR and is within the scope of the project described in the Authority’s Final EIR.

A Notice of Determination shall be filed pursuant to CEQA Guidelines sections 15094 and 15096.

Section 4 Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The Richmond City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

Section 5 No Conflict with Federal or State Law

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

Section 6 Effective Date

This ordinance shall become effective and enforceable on January 1, 2014.

* * * *

I certify that the foregoing was first read at a regular meeting of the City Council of the City of Richmond held on June 18, 2013, and finally passed and adopted at a regular meeting thereof held on July 16, 2013, by the following vote:

AYES: Councilmembers Beckles, Butt, Myrick, Rogers, and Mayor McLaughlin.
NOES: Councilmember Bates and Vice Mayor Boozé.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 11-13 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 16, 2013.