

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

**AN ORDINANCE OF THE CITY OF BELMONT, CALIFORNIA, ADOPTING BY REFERENCE SAN MATEO COUNTY ORDINANCE CODE CHAPTER 4.114 “REUSABLE BAGS” AND AMENDING THE BELMONT CITY CODE BY REORGANIZING CHAPTER 31 “WASTE REDUCTION” INTO ARTICLE I “SINGLE-USE CARRYOUT BAGS” AND ARTICLE II “POLYSTYRENE FOOD SERVICE WARE”**

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The City Council of the City of Belmont does ordain as follows:

**SECTION 1. PURPOSE**

(a) The City Council finds that:

(1) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.

(2) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.

(3) Single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean.

(4) Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

(5) The City has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags.

(b) For the reasons set forth in subsection (a) City Council determines that the use of single use carryout bags should be restricted.

(c) The San Mateo County Board of Supervisors approved a Final Program Environmental Impact Report (“EIR”) and adopted an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents (\$.10) per bag. County’s ordinance encouraged cities within and neighboring the County to adopt similar ordinances and the County’s EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and 6 cities in Santa Clara County) adopting the County’s ordinance within their own jurisdictions. The City intends this Ordinance to fall within the scope of the County’s EIR and has therefore modeled this Ordinance on the County’s ordinance.

**SECTION 2. LEGISLATIVE FINDINGS**

The City Council finds that:

(a) After the first reading of this ordinance, the City Council scheduled a public hearing on January 8, 2013.

(b) Notice of the public hearing stating the time and place of the hearing, stating that copies of San Mateo County Ordinance Code Chapter 4.114 are on file with the City Clerk and open to public inspection, and providing a description of this ordinance and its subject matter was published one a week for two weeks in a newspaper of general circulation before the public hearing as required by Government Code Section 6066.

(c) The description provided in the published public notice was sufficient to give notice to interested parties of the purpose of the ordinance and its subject matter.

(d) The ordinance description adequately summarized the ordinance for purposes of Government Code Section 36933(c)(1).

(e) Since before the publication of the public hearing notice, and for a period of at least 15 days before the public hearing, the City Clerk has continuously maintained at least one certified copy of San Mateo County Ordinance Code Chapter 4.114 on file in the City Clerk's Office for public inspection.

(f) The City has complied with the requirements of Government Code Section 50022.2 through 50022.9 for adopting a County code by reference.

### SECTION 3. BCC CHAPTER 31, ARTICLE I ADDED

Belmont City Code Chapter 31 (Waste Reduction) is amended and organized by the inclusion of an Article I entitled "Single Use Carryout Bags".

### SECTION 4. BCC CHAPTER 31, ARTICLE I, SECTIONS 31-1 THROUGH 31-4 ADDED

Belmont City Code Chapter 31 (Waste Reduction), Article I (Single-Use Carryout Bags) is amended by adding Sections 31-1, 31-2, 31-3, and 31-4 to read:

#### **Sec. 31-1                      Adoption of San Mateo County Ordinance Code Chapter 4.114 (Reusable Bags).**

(a) San Mateo County Ordinance Code Title 4, Chapter 4.114 entitled "Reusable Bags" as adopted by the San Mateo County Board of Supervisors on November 6, 2012, is hereby adopted by reference under Government Code Section 50022.9. Amendments to Chapter 4.114 as may be adopted by the Board of Supervisors shall not be effective unless subsequently adopted by the City Council in accordance with Government Code Section 50022.7.

(b) The City Clerk is directed to maintain at least one copy of Chapter 4.114 on file in the City Clerk's Office for public inspection.

(c) The regulations set forth in San Mateo County Ordinance Code Chapter 4.114 as adopted by subsection (a) shall be effective and enforced in the City of Belmont beginning April 22, 2013.

**Sec. 31-2 Administration and Enforcement by County of San Mateo.**

(a) Subject to such terms and conditions as may be required by the City Manager, the County of San Mateo Environmental Health Division is authorized to administer and enforce San Mateo County Ordinance Code Title 4, Chapter 4.114, as adopted herein and when effective as provided in Section 31-1(c), within the City of Belmont, including issuing of administrative fines and holding hearings. The City Manager is authorized to execute agreements with the County necessary to implement the authority provided by this section.

(b) The authority provided by this section supplements all other authority of the City and shall not limit the authority of the City to enforce the regulations adopted by reference in Section 31-1.

**Sec. 31-3 References to Director of the Environmental Health Division.**

For purposes of administration and enforcement by the City of Belmont, all references in San Mateo County Ordinance Code Title 4, Chapter 4.114 to the Director of the Environmental Health Department shall mean the City Manager or designee.

**Sec. 31-4 Violation.**

(a) It is unlawful for a retail establishment, and any person who is an agent, employee or owner of a retail establishment, to provide a single-use carryout bag to a customer in violation of the regulations adopted by Section 31-1.

(b) Violation of the regulations adopted by Section 31-1 is an offense that may be charged as set forth in Section 1-8.

(c) Violation of the regulations adopted by Section 31-1 may be remedied by any means available to remedy a violation of this Code. The remedies for violation of Section 31-1 are cumulative.

(d) Administrative fines issued under Chapter 30 for violation of the regulations adopted by Section 31-1 shall be as follows: \$100 for a first violation, \$200 for a second violation, and \$500 for a third and subsequent violations.

**SECTION 5. BCC CHAPTER 31, ARTICLE II ADDED**

Belmont City Code Chapter 31 (Waste Reduction) is amended and organized by the inclusion of an Article II entitled "Polystyrene Food Service Ware" incorporating and to include Sections 31-10 through 31-14 as previously adopted by Ordinance 1065.

**SECTION 6. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 8. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c) of the, once, in a newspaper of general circulation printed and published in San Mateo County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

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The foregoing ordinance was introduced before the City Council of the City of Belmont, County of San Mateo, State of California, at the regular meeting of the City Council, held on November 27, 2012 and finally adopted at a regular meeting of the City Council held on January 8, 2013 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATTACHMENT C**

**San Mateo County Reusable Bag Model Ordinance (Chapter 4.114)**

**ORDINANCE NO. 04637**  
**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,**  
**STATE OF CALIFORNIA**

\* \* \* \* \*

**ORDINANCE ADDING CHAPTER 4.114 (REUSABLE BAGS) OF TITLE 4  
(SANITATION AND HEALTH) OF THE SAN MATEO COUNTY ORDINANCE  
CODE RELATING TO REUSABLE BAGS**

The Board of Supervisors of the County of San Mateo, State of California,  
**ORDAINS** as follows

**SECTION 1.** Chapter 4.114 "Reusable Bags," consisting of Sections 4.114.010 through 4.114.080, of Title 4 of the San Mateo County Ordinance Code is hereby added as follows:

**4.114.010 Findings and purpose**

The Board of Supervisors 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 Board does, accordingly, find and declare that it should restrict the single use carry-out bags

**4.114.020 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 County 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 may meet the above criteria regardless of whether 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

#### **4.114.030 Implementation Date**

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 County during regular business hours by any 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 County 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 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) 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 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 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**

The Environmental Health Division is hereby directed to enforce this Chapter within an incorporated area of the County of San Mateo if the governing body of that incorporated area does each of the following:

(a) Adopts, and makes part of its municipal code:

- (1) Chapter 4.114 of Title 4 in its entirety by reference; or
- (2) An ordinance that contains each of the provisions of this Chapter; and

(b) Authorizes, by ordinance or resolution, the Environmental Health Division to enforce

the provision of the municipal code adopted pursuant to subsection (a) of this section, such authorization to include, without limitation, the authority to hold hearings and issue administrative fines within the affected incorporated area of the public entity.

**SECTION 2.** SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance and that those remaining provisions continue in effect.

**SECTION 3.** EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from the passage date thereof.

\* \* \* \* \*

Regularly passed and adopted this 6<sup>th</sup> day of November, 2012.

*AYES and in favor of said ordinance:*

*Supervisors:*

DAVE PINE

CAROLE GROOM

DON HORSLEY

ROSE JACOBS GIBSON

ADRIENNE J. TISSIER

*NOES and against said ordinance:*

*Supervisors:*

NONE

*Absent Supervisors:*

NONE



President, Board of Supervisors  
County of San Mateo  
State of California

***Certificate of Delivery***

*I certify that a copy of the original ordinance filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.*



Rebecca Romero, Deputy  
Clerk of the Board of Supervisors