

Chapter 8.06

CARRYOUT BAGS

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8.06.010 Definitions. The following definitions apply to this Chapter:

A. "Checkout bag" means a carryout bag intended to convey or protect goods, products or packaged food products provided by a store to a customer at the point of sale.

B. "Customer" means any person purchasing goods from a store.

C. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.

D. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags or product bags.

E. "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.

F. "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a store or to prevent such food items from coming into direct contact with other purchased items.

G. "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.

H. "Recyclable paper carryout bag" means a paper bag 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%) post-consumer recycled material;
3. is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400;
4. is accepted for recycling in curbside programs in the City;
5. has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and
6. displays the word “Recyclable” in a highly visible manner on the outside of the bag.

I. “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. has a minimum volume of 15 liters;
3. is machine washable or is made from a material that can be cleaned or disinfected;
4. does not contain lead, cadmium, or any other heavy metal in toxic amounts;
5. has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and
6. if made of plastic, is a minimum of at least 2.25 mils thick.

J. “Single Use Carryout Bag” means a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale that is not a reusable bag and does not meet the requirements of a reusable bag. A “single use carryout bag” does not include a or “product bag” or a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code to a customer purchasing a prescription medication.

K. “Store” means a retail establishment located within the incorporated area of Belvedere that meets any one or more of the following definitions:

1. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
2. A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

3. A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control. (Ord. 2014-2 § 2 (part), 2014.)

8.06.020 Plastic carryout bags prohibited. A. No store shall provide to any customer a plastic carryout bag.

B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to product bags. (Ord. 2014-2 § 2 (part), 2014.)

8.06.030 Permitted bags. All stores shall provide or make available to a customer only recyclable 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 Chapter. Nothing in this Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store. (Ord. 2014-2 § 2 (part), 2014.)

8.06.040 Regulation of recyclable paper carryout bags. A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.

B. The City Council may increase the ten cent (\$0.10) minimum charge by resolution.

C. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.

D. All stores must post signage clearly indicating the per bag charge for recyclable paper carryout bags.

E. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.

F. All monies collected by a store for recyclable paper bags under this Chapter will be retained by the store. (Ord. 2014-2 § 2 (part), 2014.)

8.06.050 Use of reusable bags. A. All stores shall make reusable bags available for purchase by a customer for at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.

B. The City Council may increase the ten cent (\$0.10) minimum charge by Resolution.

C. A store may provide reusable bags to customers at no cost until three (3) months after the effective date of the ordinance. On and after three (3) months after effective date of the ordinance, a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program. Such events shall not exceed a total of 30 days within any consecutive 12-month period.

D. Each store is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

E. No store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.

F. All stores must post signage clearly indicating the per bag charge for reusable bags.

G. All stores must indicate on the customer receipt the number of reusable bags provided and the total amount charged for the bags.

H. Each store is strongly encouraged to charge for a reusable bag at least what it cost to procure the reusable bags in order to encourage maximum reusability and not cause them to be treated as throw-away.

I. All monies collected by a store for reusable bags under this Chapter will be retained by the store. (Ord. 2014-2 § 2 (part), 2014.)

8.06.060 Exempt customers. All stores must provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store's option, to any customer participating either in the California Special Supplemental 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 or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code. (Ord. 2014-2 § 2 (part), 2014.)

8.06.070 Operative date. This Chapter shall become operative six (6) months after its effective date, for stores defined in Subsections K(1) and K(2) of Section 8.06.010. For stores defined in Subsection K(3) of Section 8.06.010, this Chapter shall become operative twelve (12) months after its effective date. (Ord. 2014-2 § 2 (part), 2014.)

8.06.080 Enforcement and violation--penalty. A. The Code Enforcement Official, (as delegated by the City Manager,) or his/her designee, has primary responsibility for enforcement of this Chapter.

B. If the Code Enforcement Official, or his/her designee, determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and that future violations will be subject to penalties.

C. Any store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

D. Violations of this ordinance shall be punishable as follows:

Plastic Bag Compliance Fee Matrix			
Violations	Number of Scanners/Registers		
	1-3	4-9	10 or more
First	Written Warning Notice		
Second	\$135.00	\$200.00	\$220.00
Third	\$185.00	\$250.00	\$270.00
Fourth	\$270.00	\$400.00	\$440.00
Fifth	Administrative Civil Penalty or Referral to DA		

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. Any store that receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the City Manager no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by the City Manager. The City Manager will conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City Manager, and will give the appellant 10 days prior written notice of the date of the hearing. The City Manager will determine whether the violation(s) in the written warning notice and/or fine(s) are accurate. The City Manager may then sustain, rescind, or modify the written warning notice or fine(s), as applicable, by written decision. The City Manager waive any portion of the fine(s) in a manner consistent with the decision. The decision of the City Manager is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision. (Ord. 2014-2 § 2 (part), 2014.)

8.06.090 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. (Ord. 2014-2 § 2 (part), 2014.)

8.06.100 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 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. (Ord. 2014-2 § 2 (part), 2014.)

8.06.110 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. (Ord. 2014-2 § 2 (part), 2014.)