ORDINANCE NO. 1268

ORDINANCE OF THE MILL VALLEY CITY COUNCIL AMENDING CHAPTER 7.40 “SINGLE-USE DISPOSABLE BAG PROHIBITIONS AND REGULATIONS” OF THE MUNICIPAL CODE TO EXPAND SINGLE-USE CARRYOUT DISPOSABLE BAG REGULATIONS TO ALL RETAIL STORES, VENDORS AND RESTAURANTS, AND TO INCREASE THE PAPER BAG AND REUSABLE BAG FEES TO A MINIMUM OF TEN CENTS ($0.10)

WHEREAS, the Mill Valley City Council unanimously adopted Ordinance 13-1249 on October 21, 2013 regulating the use of single-use carryout bags at grocery stores, pharmacies, convenience stores and mini marts; and

WHEREAS, in October 2014 two online surveys were launched to collect public input on the shopping bag ordinance, including community interest in expanding the number of stores subject to the ordinance and increasing the paper bag fee; and

WHEREAS, on June 2, 2014, November 17, 2014, January 20, 2015 and February 2, 2015 the City of Mill Valley held a duly-noticed public hearings on the proposed ordinance amendments, and did consider all oral and written public comment regarding expansion of the ordinance to all retail stores, vendors and restaurants, as well as increasing the paper bag fee to ten cents ($0.10); and

THE CITY COUNCIL OF THE CITY OF MILL VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 7.40.010 OF THE MILL VALLEY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

“7.40.010 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, to prevent such food items from coming into direct contact with other purchased items, or with respect to restaurants, to prevent spillage of take-out food 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 of Mill Valley; (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. “Restaurant” means any establishment located within the City that sells prepared food or takeout food for consumption on or off its premises. Restaurant includes itinerant restaurants, pushcarts and vehicular food vendors.

K. “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 “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.

L. “Store” or “retail store” means any of the following retail establishments located within the City of Mill Valley that is: 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; or

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; or

4. Any other person, corporation, partnership, business, facility, vendor, organization or individual, not included under subsections (1) through (3) above, that sells or provides merchandise, goods, materials or other tangible items (such as, clothing, food, or personal items of any kind) directly to a customer including, without limitation, any department store, hardware store, restaurant, catering truck, vendor at a farmers market or city-sponsored event, and any other retail store or vendor.

Dry cleaners are not considered within the meaning of “store” under this section.”

SECTION 2. SECTION 7.40.040 OF THE MILL VALLEY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

“7.40.040 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 Mill Valley City Council may increase the minimum charge by Resolution.

C. No store shall rebate, not charge or otherwise reimburse a customer any portion of the minimum charge required in Subsection A associated with a paper carryout bag, except as otherwise provided in this Chapter. Nothing shall prevent a store from providing a financial incentive to a customer that brings in his/her own bag(s) to encourage the reuse of bags.

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 may be used by the store for any lawful purpose.”
SECTION 3. SECTION 7.40.050 OF THE MILL VALLEY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

“7.40.050 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 Mill Valley City Council may increase the minimum charge by Resolution.

C. A store may provide reusable bags to customers at no cost until six (6) months after the effective date of this Chapter. On and after six (6) months after effective date of this Chapter, 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 60 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. All monies collected by a store for reusable bags under this Chapter may be used by the store for any lawful purpose.”

SECTION 4. SECTION 7.40.060 OF THE MILL VALLEY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS:

“7.40.060 Exemptions.

The provisions of this Chapter shall not apply in the following circumstances where:

A. No restaurant shall be required to charge its customers a recyclable paper carryout bag or reusable bag charge for a bag provided for a customer’s left-over food from sit-down restaurant dining.

B. 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.”
SECTION 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this 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 the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6.
Pursuant to 14 California Code of Regulations, Chapter 3, Article 19, Sections 15307 and 15308, this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) in that the City Council of the City of Mill Valley, acting as a regulatory agency, is exempt from actions taken to protect natural resources (15307) and the environment (15308).

SECTION 5. This Ordinance shall be effective 30 days following its adoption by the City Council, with enforcement of its provisions commencing one hundred-eighty (180) days after adoption.

A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

INTRODUCED at a regular meeting of the City Council of the City of Mill Valley on the 2nd day of February, 2015 and

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Mill Valley on this 17th day of February 2015, by the following vote:

AYES:
NOES:
ABSENT:

_________________________________
Kenneth R. Wachtel, Mayor

Attest:

_________________________________
Kelsey Rogers, City Clerk/Administrative Assistant