

ORDINANCE NO. 716
Of the City Council of the Town of Colma

**ORDINANCE ADDING SUBCHAPTER 4.12 TO THE COLMA MUNICIPAL CODE,
REGARDING REUSABLE BAGS**

The City Council of the Town of Colma does hereby ordain as follows:

Article 1. Colma Municipal Code Subchapter 4.12 Added

The Colma Municipal Code is amended by adding thereto subchapter 4.12 to Chapter Four, consisting of sections 4.12.010 through 4.12.080, as follows:

CHAPTER FOUR: BUSINESS ACTIVITIES

Subchapter 4.12: Reusable Bags

4.12.010 Findings and Purpose

The City Council of the Town of Colma finds 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 and constitute a high percentage of litter in storm-drains, creeks, the bay and the ocean, which is unsightly, costly to clean up, and causes serious negative environmental impacts; and
- (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.
- (e) The Town of Colma has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags; and
- (f) On October 23, 2012 the San Mateo County Board of Supervisors approved an 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 initially and (\$.25) after January 1, 2015; and
- (g) The County's EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and six cities in Santa Clara County) adopting the County's ordinance within their own jurisdictions; and
- (h) On November 6, 2012, San Mateo County adopted an ordinance banning single-use carryout bags from stores, while requiring stores to provide reusable bags; and

(i) The Town of Colma intends this Ordinance to fall within the scope of the County's EIR and has therefore modeled this Ordinance on the County's ordinance; and

(j) The City Council does find and declare that it should restrict the single use carry-out bags as set forth in this ordinance.

4.12.020 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 re-user" 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 re-users.

(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

4.12.030 Implementation Date

This subchapter shall not be implemented until April 22, 2013.

4.12.040 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.

4.12.050 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.

4.12.060 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 in an amount not to exceed the amounts set forth in section 1.05.020 of the Colma Municipal Code as penalties for an infraction.

(c) *Separate Violations.* Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.

(d) *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.

(e) *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.

4.12.070 Severability

If any provision of this subchapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this subchapter, 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.

4.12.080 Authorization of Enforcement by San Mateo County Personnel

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce, on behalf of the Town of Colma, this subchapter and any amendments thereto, within the jurisdictional boundaries of the Town of Colma. Such enforcement authority includes, but is not limited to, the collection of fees and fines, and the authority to hold hearings and issue administrative fines for violations of this Chapter within the geographical limits of the Town of Colma.

Article 2. CEQA Compliance

On October 23, 2012, the County of San Mateo County certified the Final Program Environmental Impact Report ("EIR"), SCH 2012042013, which analyzed the impacts of the San Mateo County Reusable Bag Ordinance if adopted in cities throughout the County of San Mateo.

The EIR was adopted 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.* It is incorporated by reference herein.

Pursuant to Section 15186 of the CEQA Guidelines, the City Council has considered the EIR prepared by the County, has used its independent judgment and analysis, and has reached its own conclusions on whether and how to approve this ordinance. Accordingly, the City Council of the Town of Colma finds that:

- 1) The Program EIR is complete, correct, and adequate, and was prepared in accordance with CEQA and CEQA Guidelines; and
- 2) The proposed ordinance is within the scope of the program examined in the Program EIR;
- 3) The proposed ordinance will not result in environmental effects that were not examined in the program EIR, and therefore the proposed ordinance is covered by the Program EIR; and
- 4) No new environmental effects could occur, and no new mitigation measures are required, because of events occurring after the program EIR was certified; and
- 5) None of the conditions in CEQA Guidelines sections 15162 or 15163 are applicable to adoption of the proposed ordinance, and adoption of the proposed 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.

Article 3. Effective Date.

This ordinance, or a summary thereof prepared by the City Attorney, shall be posted on the three (3) official bulletin boards of the Town of Colma within 15 days of its passage. The City Manager is directed to cause a Notice of Determination to be filed pursuant to CEQA Guidelines sections 15094 and 15096.

Certification of Adoption

I certify that the foregoing Ordinance No. 716 was introduced at a regular meeting of the City Council of the Town of Colma held on December 11, 2012, and duly adopted at a regular meeting of said City Council held on January 9, 2013 by the following vote:

Name	Counted toward Quorum			Not Counted toward Quorum	
	Aye	No	Abstain	Present, Recused	Absent
Joan F. del Rosario, Mayor	x				
Joseph Silva, Vice Mayor	x				
Diana Colvin	x				
Helen Fisicaro	x				
Raquel "Rae" Gonzalez	x				
<i>Voting Tally</i>	5	0			

Dated _____

Joan F. del Rosario, Mayor

Attest: _____
Laura Allen, City Clerk