

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE**

**IN THE MATTER OF:**

AN ORDINANCE OF THE CITY COUNCIL OF THE	)	
CITY OF LAFAYETTE ADDING CHAPTER 5-7 ENTITLED	)	Ordinance 626
“SINGLE-USE CARRYOUT BAGS” & CHAPTER 5-8	)	
ENTITLED “FOOD PACKAGING RECYCLING” OF	)	
TITLE 5 OF THE LAFAYETTE MUNICIPAL CODE	)	
PROHIBITING RETAILERS AND PUBLIC EATING	)	
ESTABLISHMENTS FROM PROVIDING SINGLE-USE	)	
CARRYOUTBAGS TO CUSTOMERS, REQUIRING	)	
RETAILERS TO IMPOSE MINIMUM CHARGES FOR	)	
RECYCLED PAPER CARRYOUT BAGS, AND PROMOTING	)	
THE USE OF REUSABLE BAGS BY RETAIL AND PUBLIC	)	
<u>EATING ESTABLISHMENT CUSTOMERS</u>	)	

**Section 1. Findings.** The City Council of the City of Lafayette does ordain as follows:

**WHEREAS**, in 2011, the City Council adopted the Environmental Strategy, which includes the goal of “Target[ing] a solid waste diversion rate of 75-percent.” One program to implement that goal is “to monitor packaging (such as plastic bags and Styrofoam) legislation at the State level and by other cities and report if there is a feasible approach for Lafayette”, and

**WHEREAS**, the Environmental Task Force has been monitoring plastic bag usage and recommended the City Council consider a ban on single-use plastic bags for the following reasons:

- Divert waste from landfill; 95-percent of plastic bags are not recycled
- Reduce litter, which can end up in creeks and storm drain systems
- Limit negative impact on wildlife
- Diminish use of fossil fuels
- Prevent plastic bags from clogging machinery, leading to ongoing increased maintenance and financial impacts; and

**WHEREAS**, on May 30, 2013, the State Senate considered Senate Bill No. 405, which prohibits stores from distributing single-use plastic bags and allows the sale of reusable, paper, and in certain jurisdictions) compostable plastic bags; and

**WHEREAS**, SB405 failed to pass by a narrow margin of three votes; and

**WHEREAS**, on December 9, 2013, the City Council authorized the mayor to send a letter to State Senators Mark DeSaulnier and Alex Padilla indicating that the City Council: (1) supports a ban on single-use plastic carry-out bags, (2) supports a ban on single-use paper carry-out bags unless they have a specified recycled content, and (3) urges the Senators to modify the bill to not mandate a point-of-sale charge for single-use paper carry-out bags; and

**WHEREAS**, according to Californians Against Waste, one-hundred and twelve (112) cities and counties are covered by local ordinances that ban single-use carry-out plastic bags, which is equivalent to more than 1/3 of the state population; and

**WHEREAS**, on September 30, 2014, Governor Brown signed Senate Bill No. 270 (SB270), regulating single-use carryout bags, and includes implementation for a limited number of businesses, phases multiple phases of implementation, and a requirement to charge for alternate bags, into law; and

**WHEREAS**, State provisions in the final bill include a preemption provision that limits a city, county, or other local public agency's ability to enforce or otherwise implement an ordinance, resolution, regulation, rule, or any amendment relating to reusable grocery bags, single-use carry-out bags, or recycled paper bags; and

**WHEREAS**, on July 14, 2014, the City Council adopted Resolution 2014-45, indicating the intent to pass a local ordinance, supplementing any State action regarding single-use carryout bags; and

**WHEREAS**, the Lafayette City Council does not consider the State provisions to be sufficient to satisfy the City's desire for an effective law removing plastic bags from the waste stream and desires to preserve local control; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW THEREFORE BE IT RESOLVED BY THE CITY OF LAFAYETTE CITY COUNCIL THAT:**

**Section 2. CEQA.** The City Council finds that adoption of this ordinance is exempt from CEQA pursuant to the following guidelines: Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources – Class 7), and Section 15308 (Actions by Regulatory Agencies for Protection of the Environment – Class 8). This ordinance constitutes a regulatory action of the City Council to assure the maintenance, restoration, or enhancement of natural resources involving protection of the environment because it will minimize impacts associated with single-use carryout bags on the environment of the City and the region. Therefore the project is found and determined to be exempt from CEQA pursuant to State CEQA Guidelines Section 15307. Further, this ordinance is a regulatory action of the City Council to assure the maintenance, restoration, enhancement, and/or protection of the environment, which does not involve any construction activity or relaxation of standards allowing environment degradation. Therefore, as a separate and independent basis, the project also is found exempt from CEQA pursuant to CEQA Guidelines Section 15308. The findings and determinations on exemption from CEQA are, in part, based on the following:

- a. This ordinance will reduce single-use carryout bags within the City of Lafayette, thereby reducing the existing and future impacts of single-use carryout bag litter, including, but not limited to, the adverse aesthetic impacts of litter.
- b. This ordinance will further assure the maintenance, restoration, and/or enhancement of natural resources in the City and region by reducing the amount of potential litter and debris that can affect the biological, botanical, and environmental resources.

- c. This ordinance will further assure the maintenance, restoration, enhancement, and/or protection of the environment by reducing trash in the waste stream by encouraging the use of use of reusable bags and packaging and the use of recycled materials.
- d. It is determined with certainty that this ordinance has no possibility that the use of reusable bags, the prohibition of single-use carryout bags, and establishment of a paper bag fee will have a significant impact on the environment.

**Section 3. Notice of Determination.** The City Council directs staff to prepare and file a Notice of Determination no more than five (5) working days after adoption of this Ordinance.

**Section 4. Adoption of Amendment.** Based on the record before the City Council, all written and oral evidence presented to the City Council, the City Council hereby adopts Ordinance 626 adding Chapter 5-7 "Single-Use Carryout Bags" and Chapter 5-8 " of the Lafayette Municipal Code, as described in Exhibit "A" attached hereto and incorporated herein by reference.

**Section 5. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**Section 6. Public Records.** The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd. #210, Lafayette, California 94549.

**Section 7. Publication.** The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, including the names of the city council members voting for and against its passage, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the city council members who voted for and against its passage.

**Section 8. Effective Date.** This Ordinance becomes effective on July 1, 2015, in order to provide local businesses with ample opportunity to prepare for the new regulations.

**Section 9. Certification.** The City Clerk shall certify to the adoption of this Ordinance.

**PASSED AND ADOPTED** by the City Council of the City of Lafayette at a regular meeting on December 8, 2014, by the following vote:

<b>AYES:</b>	<b>B. Andersson, Mitchell, Reilly, and Tatzin</b>
<b>NOES:</b>	<b>None</b>
<b>ABSENT:</b>	<b>M. Anderson</b>
<b>ABSTAIN:</b>	<b>None</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Joanne Robbins, City Clerk

\_\_\_\_\_  
Don Tatzin, Mayor

**Exhibit "A"**

Chapter 5-7 of Title 5 of the Lafayette Municipal Code is hereby added to read as follows:

**Chapter 5-7  
SINGLE-USE CARRYOUT BAGS**

**Section 5-701 Definitions**

**Section 5-702 Plastic Carryout Bags Prohibited**

**Section 5-703 Permitted Bags**

**Section 5-704 Regulation of Recycled Paper Carryout Bags for Retail Establishments**

**Section 5-705 Use of Reusable Bags**

**Section 5-706 Enforcement**

**5-701 Definitions.**

For the purposes of this chapter only, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:

- a. "Carryout Bag" means any bag, including a Plastic Bag, provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food, merchandise, or other goods out of a Retail Establishment or a Public Eating Establishment. Carryout Bags do not include Produce Bags or Product Bags.
- b. "Customer" means any person purchasing goods from a Retail Establishment or a Public Eating Establishment.
- c. "Inspector" means an individual designated by the City Manager to conduct any inspections required or permitted under this Chapter.
- d. "Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment or Public Eating Establishment, which may include, but is not limited to, the owner of a Retail Establishment or a Public Eating Establishment.
- e. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- f. "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. The term "Plastic Bag" includes compostable and biodegradable bags but does not include Reusable Bags, Recycled Paper Carryout Bags, Produce Bags, or Product Bags.
- g. "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.
- h. "Prepared Food" means foods or beverages which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed, other than heating. Prepared food does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed or mixed.
- i. "Produce 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.
- j. "Product Bag" means a bag integrated into the packaging of the product or a bag used (1) to hold prescription medication dispensed from a pharmacy; or (2) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed

together in a Reusable Bag or Recycled Paper Carryout Bag (examples include small paper bag for greeting cards, paper bags to protect glass bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, etc.).

- k. "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.
- l. "Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purposes 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.
- m. "Recycled 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%) Postconsumer Recycled Material; (3) displays the word "Recyclable": in a highly visible manner on the outside of the bag; and (4) and displays the percentage of Postconsumer Recycled Material used. Recycled Paper Carryout Bags do not include Produce Bags or Product Bags.
- n. "Retail Establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to a Customer; and is located within or doing business within the geographical limits of the City of Lafayette.
- o. "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all 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, a minimum of 2.25 mils thick.

#### **5-702 Plastic Carryout Bags Prohibited.**

No Retail Establishment or Public Eating Establishment shall provide any Carryout Bag to a Customer except as provided in this Chapter.

#### **5-703 Permitted Bags.**

All Retail Establishments or Public Eating 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 Chapter prohibits Customers from using bags of any type that they bring to the Retail Establishment or Public Eating Establishment themselves or from carrying away goods that are not placed in a bag.

#### **5-704 Regulation of Recycled Paper Carryout Bags for Retail Establishments.**

- a. Any Retail Establishment that provides a Recycled Paper Carryout Bag to a Customer must charge the Customer for each bag provided, except as otherwise provided in this Chapter.
- b. Businesses not regulated under California Senate Bill 270 may elect to not collect the minimum charge. Notwithstanding the forgoing, the Council may impose a mandatory charge for businesses not regulated under California Senate Bill 270, after a duly noticed public hearing.
- c. The minimum charge per Recycled Paper Carryout Bag will initially be ten cents (\$0.10). The City Council may increase the minimum charge, after a duly noticed public hearing.
- d. All collected monies will be retained by the Retail Establishment.

**5-705 Use of Reusable Bags.**

- a. All Retail Establishments must make Reusable Bags available to Customers for purchase. Exemptions will be made for sanctioned reusable bag giveaway events that are intended to promote the use of Reusable Bags not exceeding a total of 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.

**5-706 Inspection.**

An Inspector shall have the right to enter any Retail Establishment or Public Eating Establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this Chapter.

**5-707 Enforcement.**

- a. Those individuals specified in Title 1, Chapter 7 of this Code are authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing citations, and entering the premises of any Retail Establishment or Public Eating Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment or Public Eating Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager or his/her designee.
- b. If any of those individuals specified above determine that a violation of this Chapter has occurred, he/she will issue a written warning notice to the Operator of the Retail Establishment or Public Eating Establishment that a violation has occurred and the potential penalties that will apply for future violations.
- c. Any Retail Establishment or Public Eating Establishment that violates or fails to comply with any of the requirements of this Chapter after a written notice has been issued for a previous violation shall be guilty of an infraction punishable as specified in Title 1 of this Code.

Chapter 5-8 of Title 5 of the Lafayette Municipal Code is hereby added to read as follows:

**Chapter 5-8  
FOOD PACKAGING RECYCLING**

- Section 5-801 Findings and purpose**
- Section 5-802 Enforcement**
- Section 5-803 Voluntary phase-out period**
- Section 5-804 Returnable and recycleable food packaging**
- Section 5-805 Prohibited food packaging**
- Section 5-806 Exemptions**

**5-801 Findings and purpose.**

- a. Existing landfill space for the disposal of municipal solid waste is rapidly diminishing. The State of California, through its California Waste Management Act of 1989, Assembly Bill 939, requires that each local jurisdiction in the state divert 50-percent of discarded materials from landfills. The recycling of recyclable materials will help postpone the need for new landfill capacity, help

the city meet its mandatory landfill diversion quotas and also reduce pollution and loss of resources which occurs when perfectly usable materials are discarded.

- b. Take-out food packaging constitutes a significant and growing portion of the material in the city's waste stream. An additional concern is that much of the non-recyclable take-out food packaging is made of polystyrene foam in which chlorofluorocarbons ("CFCs") were used as a blowing agent in the manufacturing process. Scientific evidence indicates a strong probability that CFCs, when discharged into the atmosphere, degrade the earth's ozone layer. There are substitutes for these polystyrene take-out food packaging products which do not use CFCs in their manufacture. Requiring that take-out food packaging be made of non-CFC processed material be recyclable, reusable or made of recycled materials is an essential part of an effective integrated solid waste management program for the citizens of the city and others working or doing business in the city.
- c. The health, welfare and safety of the people in the city are promoted by the use of returnable or recyclable materials in take-out food packaging and by the city-wide collection of recyclable waste materials. The purpose of this chapter is to mandate the collection and recycling of recyclable waste materials, establish a curbside recycling program to aid this requirement, and to reduce the use of take-out food packaging which is not reusable or recyclable.

**5-802 Enforcement.**

The code enforcement officer or his designated representative is assigned the duty and responsibility of enforcing this chapter. The code enforcement officer or his designated representative may request written records or alternative evidence to demonstrate compliance with this chapter.

**5-803 Voluntary phase-out period.**

The city encourages the immediate, voluntary phase-out of take-out food packaging sold or offered at retail food establishments within the city, which is neither returnable, made of materials all of which are readily recyclable, nor made with a significant amount of post-consumer recycled material. The provisions of this article are voluntary until July 1, 2015. On or after July 1, 2015, the provisions of this article are mandatory without further notice.

**5-804 Returnable and recyclable food packaging.**

- a. On and after July 1, 2015, at least 50-percent by volume of each retail food establishment's packaging in which take-out food is sold or provided to customers or which is kept, purchased or obtained for this purpose shall be returnable or recyclable.
- b. On and after January 1, 2020, at least 75-percent by volume of each retail food establishment's packaging in which take-out food is sold or provided to customers or which is kept, purchased or obtained for this purpose shall be returnable or recyclable.

**5-805 Prohibited food packaging.**

On and after July 1, 2015, no retail food establishment shall purchase, obtain, keep, sell, distribute or otherwise use in its business any polystyrene CFC-processed take-out food packaging except as provided in Section 5-806.

**5-806 Exemptions.**

- a. Food packaging required to be purchased under an existing contract entered into prior to the effective date of the ordinance codified in this chapter is exempt from the provisions of this chapter.
- b. The city manager or designee may exempt a retail food establishment or a take-out food



packaging material from the provisions of this article for a one-year period, renewable annually, upon proper written application and a showing of undue hardship or a showing that no appropriate substitute take-out food packaging is available. Such an application shall include a list of all food packaging suppliers or manufacturers contacted regarding the availability of substitute take-out food packaging.