

ORDINANCE NO. 1216

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAUSALITO ESTABLISHING SECTION 11.30 OF CHAPTER 11 OF THE
SAUSALITO MUNICIPAL CODE REGULATING THE USE OF SINGLE USE
CARRYOUT BAGS**

WHEREAS, it is estimated that almost 3.8 million plastic single use carryout bags are distributed by retailers in the City of Sausalito each year, amounting to approximately 530 such bags for each resident each year; and

WHEREAS, the manufacture and distribution of single use carryout bags requires utilization of finite natural resources; and

WHEREAS, the use of single use shopping bags have severe environmental impacts, including greenhouse gas emissions, litter, harm to wildlife, water consumption and solid waste generation; and

WHEREAS, plastic bag litter results in costs to the City through removal of bag debris from storm drains, public roadways, parks and open space; and

WHEREAS, statewide the rate of recycling plastic bags is only approximately five percent (5%); and

WHEREAS, in 2013 the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) prepared a draft Model Single Use Carryout Bag Reduction Ordinance that participating JPA member agencies within Marin County (including the City of Sausalito) can consider for adoption; and

WHEREAS, the JPA was assigned the role of administering the California Environmental Quality Act (“CEQA”) process and a determination was made that the JPA would prepare an Environmental Impact Report (“EIR”) through Final EIR completion for adoption of the model ordinance in all of the member municipalities. The JPA prepared a Notice of Preparation for an EIR for the draft model ordinance, which was published on June 21, 2013, initiating a 30-day review period. On July 9, 2013, the JPA conducted a public scoping meeting; and

WHEREAS, on November 1, 2013 the Single Use Carryout Bag Reduction Ordinance Draft EIR was completed and published for public review (State Clearinghouse #2013062049). Commencing on November 1, 2013, a 45 day public review period was observed, ending on December 15, 2013. The Draft EIR concluded that: a) for each environmental issue studied, impacts would either be less than significant or beneficial; b) the draft model ordinance would not result in any significant, unavoidable impacts, or any significant impacts that require mitigation. Further, as required by the CEQA Guidelines, the Draft EIR analyzed alternatives to

the project (model ordinance) and identified an environmentally superior alternative to the project. Seven alternatives were evaluated in the Draft EIR. The analysis of alternatives is presented in Section 6.0 of the Draft EIR, which concluded that Alternative 4 (Mandatory Charge of \$0.10 for Recyclable Paper Carryout Bags) would be environmentally superior compared to the draft model ordinance; and

WHEREAS, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA guidelines Sections 15088 and 15089, the JPA responded to all environmental comments that were submitted on the Draft EIR during the public review period. A Final EIR was prepared and published; and

WHEREAS, on January 16, 2014 the JPA Board of Directors held a duly-noticed public hearing on the Final EIR, accepting all oral and written public testimony and the written report of the JPA staff. Following closure of the public hearing and deliberation, the Board of Directors, on an 11-0 vote, adopted Resolution No 2014-01 certifying the Single Use Bag Reduction Ordinance Final EIR. This certification was based on and supported by findings, which are incorporated herein by reference; and

WHEREAS, the Final EIR was reviewed to determine if it adequately analyzed the environmental impacts of the proposed ordinance. Based on this review, and as set forth in the findings below, the City Council has determined that adoption of the proposed ordinance would not result in any significant new information or new significant impacts that had not been previously analyzed in the Final EIR. Consistent with the requirements of the CEQA Guidelines Section 15096 the City of Sausalito has considered the Final EIR prepared by the JPA as the lead agency, and has reached its own conclusions on whether and how to approve the proposed ordinance based on findings of fact contained herein; and

WHEREAS, on March 4, 2014, the City of Sausalito City Council held a duly noticed public hearing on the proposed ordinance, and did consider all oral and written public comment, the staff report, the Final EIR and the Record as a whole prior to making a determination on the proposed ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Sausalito as follows:

Section 1. Findings. The City Council of the city of Sausalito hereby finds that:

- A. General Plan Consistency. The proposed ordinance to ban the use of single use plastic bags is consistent with the policies and programs of the Sausalito General Plan including Policies EQ3.14 (Solid Waste Conservation and Recycling), EQ-3.4 (Water Quality) and EQ-3.8 (Wetlands Protection) in that the proposed ordinance would reduce the presence and impacts of plastic bag litter in areas of natural habitat and reduce generation of solid waste.
- B. Public Health, Safety and Welfare. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to restrict the distribution of

single use carryout bags. Rather, the public health, safety and general welfare will be enhanced and further protected by reducing land-filling of waste products, reducing long-lasting litter throughout the community and natural areas, reducing costs of removal of debris from storm drains and other public clean-up costs.

Section 2. A new Section 11.30 is hereby added to Chapter 11 (Environmental Protection) of the Sausalito Municipal Code as follows:

Chapter 11.30 SINGLE USE CARRYOUT BAGS

- Sections:
- 11.30.010 Purpose
 - 11.30.020 Definitions
 - 11.30.030 Plastic carryout bags prohibited.
 - 11.30.040 Permitted bags.
 - 11.30.050 Regulation of recyclable paper carryout bags.
 - 11.30.060 Use of reusable bags.
 - 11.30.070 Exempt customers.
 - 11.30.080 Operative date.
 - 11.30.090 Enforcement and violation – penalty.
 - 11.30.100 No conflict with federal or state law.

11.30.020 Purpose.

The purpose of the ordinance is to reduce the amount of plastic bag pollution in the environment, to reduce the impacts of paper bags which cause other forms of pollution and greenhouse gas emissions, and to encourage reusable bags by consumers and retailers.

11.30.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- 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 of Sausalito; (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, if any; 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 capacity 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 "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 the City of Sausalito 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-Bums 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, food mart, 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.

11.30.030 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.

11.30.040 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.

11.30.050 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 Sausalito City Council may increase the ten cents (\$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.

11.30.060 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 Sausalito 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 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. 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.

11.30.070 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 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.

11.30.080 Operative date.

This Chapter shall become operative on and after October 18, 2014.

11.30.090 Enforcement and violation – penalty.

- A. The City Manager and such code enforcement officials as he or she may designate has primary responsibility for enforcement of this Chapter. The City Manager or designee is 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 fines and entering the premises of any store during business hours.
- B. For the first violation of this Chapter, the City Manager or designee shall issue a written warning to the operator of the store notifying the operator that that a violation of this Chapter has occurred and the potential penalties that will apply for future violations.
- C. It is unlawful for the operator of any store to violate or fail to comply with any of the requirements of this Chapter after a written warning notice has been issued.

Violations of this Chapter may be prosecuted as a misdemeanor or infraction in accordance with SMC Chapter 1.05 and/or subject to the Administrative Penalties set forth in SMC Chapter 1.10.

11.30.100 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.

Section 3. Severability:

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code is declared unconstitutional or without effect by any final judgment or decree of a court of competent jurisdiction, such judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code.

Section 4 Publication and Effective Date:

This ordinance shall be published in accordance with applicable provisions of law, by either; publishing the entire ordinance once in a newspaper of general circulation within fifteen (15) days after its passage and adoption, or publishing the title or appropriate summary at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect six (6) months after the date of its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Sausalito on the ___ day of ____, 2014 by the following vote:

AYES:	Councilmembers:	None
NOES:	Councilmembers:	None
ABSTAIN:	Councilmembers:	None
ABSENT:	Councilmembers:	None

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK