

ORDINANCE NO. 2422

ORDINANCE ADDING ARTICLE 32.05 TO THE CITY OF DAVIS MUNICIPAL CODE TO REDUCE THE DISTRIBUTION OF CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS

WHEREAS, on December 6, 2011, the City Council adopted Resolution No. 11-185, Series 2011, in which the City announced its intention to strive to implement zero waste strategies; and

WHEREAS, the City Council desires to conserve resources, reduce greenhouse gas (GHG) emissions, waste, litter and pollution; and

WHEREAS, an important goal of the City of Davis is to procure and use sustainable products and services; and

WHEREAS, the use of single-use carryout bags (plastic, paper, and biodegradable) has negative environmental impacts, including GHG emissions, litter, water consumption, solid waste generation and effects on wildlife; and

WHEREAS, from an overall environmental and economic perspective, a shift to reusable bags is a better alternative to the continued use of single-use plastic and paper carryout bags; and

WHEREAS, studies and impacts from similar policies adopted in other jurisdictions have shown a dramatic reduction in the use of single-use carryout bags; and

WHEREAS, the City Council recognizes that the unique facts and circumstances of Applicable Businesses and City Facilities, as defined in the Ordinance, justify regulating the use of single-use carryout bags in these establishments; and

WHEREAS, this Ordinance reflects City Council direction from the September 10, 2013 City Council meeting to pursue an ordinance regulating the use of carryout bags by all retail establishments within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby adopts the recitals of this Ordinance as true and correct and such recitals are hereby incorporated by reference as though fully set forth in the text of this Ordinance.

SECTION 2. Article 32.05, as set forth in the attached Exhibit A, incorporated by this reference, is hereby added to the City of Davis Municipal Code to include the following sections:

Article 32.05 Disposable Bag Reduction Program

- 32.05.01 Definitions**
- 32.05.02 Carryout Bag Regulation**
- 32.05.03 Recycled Paper Bag Cost Pass-Through.**
- 32.05.04 Exemptions**
- 32.05.05 Enforcement**
- 32.05.06 City Collaboration with Businesses**

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or 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 thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law.

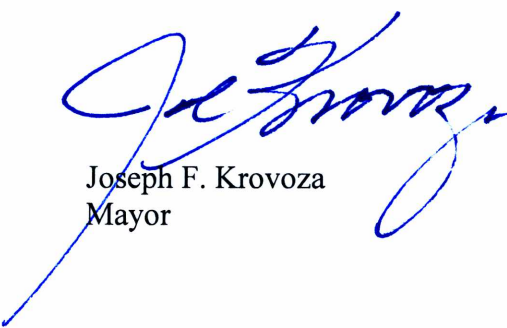
SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

INTRODUCED on the 8th day of October, 2013, and PASSED AND ADOPTED by the City Council of the City of Davis on this 12th day of November, 2013, by the following vote:

AYES: Frerichs, Lee, Wolk, Krovoza

NOES: None

ABSENT: Swanson


Joseph F. Krovoza
Mayor

ATTEST:

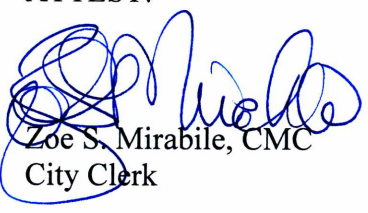

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT A

ARTICLE 32.05 DISPOSABLE BAG REDUCTION PROGRAM

32.05.01 Definitions

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

- (a) **“Applicable Business”** 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 City of Davis. Retail establishment does not include Nonprofit Charitable Reuse Organizations but includes restaurants, take-out food establishments, 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.
- (b) **“City Facility”** means a park, building or other facility located on City property or operated by the City.
- (c) **“Nonprofit Charitable Reuse Organization”** means a charitable organization as defined in Section 501c3 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 (50%) of its revenues from the handling and sale of those donated goods or materials.
- (d) **“Paper Bag Cost Pass-Through”** means the cost which must be collected by an Applicable Business from their customers when providing a Recycled Paper Bag.
- (e) **“Perishable Food”** means frozen foods, refrigerated foods, breads, and fresh produce. Perishable Food does not include items found in vending machines.
- (f) **“Postconsumer Material”** means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer Material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (g) **“Recycled Paper Bag”** means a paper carryout bag provided by an Applicable Business to a customer at the point of sale that meets all of the following applicable requirements:
 - (1) Except as otherwise provided in this section, the paper carryout bag contains a minimum of 40 percent Postconsumer Materials.
 - (2) An eight pound-rated or smaller Recycled Paper Bag shall contain a minimum of 20 percent Postconsumer Material.
 - (3) The paper carryout bag is accepted for curbside recycling in Davis.
 - (4) The paper carryout bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400, as published in September 2004.
 - (5) Printed on the paper carryout bag is the percentage of Postconsumer Material content.

- (h) **"Reusable Bag"** means a bag with handles that is specifically designed and manufactured for multiple reuses and meets all of the following requirements:
- (1) Is machine washable or easily cleaned or disinfected.
 - (2) 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.
 - (3) If made of plastic, is a minimum of at least 2.25 mils (thousandths of an inch) thick.
 - (4) Has a minimum lifetime of 125 uses, which for purposes of this subdivision, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.
- (i) **"Single-Use Carryout Bag"** means a bag other than a Reusable Bag provided at the check stand, cash register, point of sale, or other location for the purpose of transporting food or merchandise out of an Applicable Business.

Single-Use Carryout Bags do not include:

- (1) Bags used to:
 - i. Package loose bulk items, such as fruit, vegetables, nuts, grains, candy, cookies, or small hardware items;
 - ii. Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
 - iii. Contain or wrap flowers, potted plants, or other items where damage to or contamination of other goods placed together in the same bag may be a problem (includes paper bags to protect bottles, newspaper bags, laundry dry-cleaning bags, plastic bags around ice cream or other wet items, and small paper bags for greeting cards); or
 - iv. Contain unwrapped prepared goods or bakery goods.
 - (2) Bags provided by pharmacists to contain prescription drugs.
 - (3) Newspaper bags, door-hanger bags, or laundry-dry cleaning bags.
- (j) **"Single-Use Plastic Carryout Bag"** means any bag that is less than two and one-quarter mils (thousandths of an inch) thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources, that is provided by an Applicable Business or at a City Facility to a customer at the point of sale and that is not a Reusable Bag.

32.05.02 Carryout Bag Regulation

- (a) On and after July 1, 2014 an Applicable Business shall not provide a Single-Use Carryout Bag to a customer at the point of sale, except as provided in Sections 32.05.03 or 32.05.04.
- (b) An Applicable Business may make Reusable Bags available for purchase by a customer and shall charge no less than 10 cents for Reusable Bags.

- (c) On and after July 1, 2014, an Applicable Business may provide Reusable Bags to customers at no cost only when combined with a time-limited store promotional program.
- (d) No person shall distribute a Single-Use Plastic Carryout Bag at a City sponsored, organized or permitted event at any City Facility unless otherwise permitted in this article or approved by the Public Works Director or designee.
- (e) Nothing in this article shall prohibit stores from encouraging and providing incentives for the use of Reusable Bags through education and through credits or rebates for customers that bring their own carryout bags at the point of sale for the purpose of carrying away goods.
- (f) Nothing in this article shall prohibit 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.

32.05.03 Recycled Paper Bag Cost Pass-Through

On and after July 1, 2014, except as provided in Section 32.05.04, an Applicable Business may only provide a Recycled Paper Bag to a customer if it collects a Paper Bag Cost Pass-Through from the customer for each Recycled Paper Bag provided.

- (a) The Paper Bag Cost Pass-Through shall be no less than 10 cents, which has been determined to be the actual average cost for a retailer to provide a Recycled Paper Bag.
- (b) No Applicable Business collecting a Paper Bag Cost Pass-Through pursuant to this Section shall rebate or otherwise reimburse a customer for any portion of this pass-through.

32.05.04 Exemptions

An Applicable Business may provide a Reusable Bag or a Recycled Paper Bag at no cost at the point of sale to a customer who is participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code, or a customer who is participating in the Supplemental Food Program pursuant to Chapter 10 of Part 3 of Division 9 of the Welfare and Institutions Code.

32.05.05 Enforcement

Any Applicable Business violating this article shall be guilty of an infraction and shall be subject to a fine in the amount of one hundred dollars (\$100) for the first violation, two hundred dollars (\$200) for the second violation, and five hundred dollars (\$500) for the third and subsequent violations occurring within a one-year period.

32.05.06 City Collaboration with Businesses

The City may periodically contact Applicable Businesses to assess the effectiveness of this article and to provide assistance for implementation efforts. This may include periodic surveys, outreach meetings and/or written communications with Applicable Businesses.