

Ordinance No. 5032

Ordinance of the Council of the City of Palo Alto Amending Chapter 5.35 ("Retail Sales - Requirement for Paper Bags") of Title 5 ("Health and Sanitation") of the Palo Alto Municipal Code to Place a Limited Prohibition of Single-Use Plastic Checkout Bags

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings. The City Council finds as follows:

- (a) The use of single-use plastic checkout bags has increased dramatically in recent years. Many of these bags end up littering the landscape and contaminating creeks, bays and oceans. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program, 60 percent of the litter found in Bay Area creeks annually is plastic.
- (b) Palo Alto's land-based debris, including litter (mostly bags, packaging and single-use disposable products) is conveyed through storm drains to local creeks, into San Francisco Bay and into the Pacific Ocean. Plastic debris does not completely biodegrade in the marine environment as paper does; instead plastics break down into smaller and smaller pieces, absorbing toxins and forming high toxin concentrations, which in turn harm marine animals when they are mistaken for food. As a result, plastic bags have been found to adversely impact many wildlife species that ingest or become entangled in them. It is therefore in the best interests of the public health, safety, and welfare to restrict their distribution within the boundaries of the City of Palo Alto.
- (c) The Pacific Ocean contains a huge accumulation of plastic debris. Some scientists estimate that the density of plastic can be as great as one million pieces of plastic per square mile.
- (d) Plastic bags represent an unnecessary use of a nonrenewable resource. Reusable bags represent the sustainable alternative to single-use bags of all types.
- (e) Even with the emphasis on recycling of plastics in the last several decades, the plastic bag recycling rate in California as of 2008 remains at approximately 5% or less, according to the California Integrated Waste Management Board.
- (f) The City discourages the use of all types of single-use bags, because single-use bags consume more resources and produce more waste than reusable bags. However, plastic bags are the least desirable type of all single-use bags because they consume a

nonrenewable resource, degrade very slowly and harm marine life. It is the City’s intent to address all types of single-use plastic bags, including compostable and biodegradable ones, because all types consume non-renewable resources and can harm marine life.

- (g) Recyclable paper bags degrade more rapidly and are therefore not as environmentally damaging as single-use plastic checkout bags. Because paper bags are more successfully recycled than plastic bags due to plastic bag handling and sorting difficulties, diverting paper bags from landfill disposal is more attainable for paper bags than it is for plastic bags, given current technologies.
- (h) Reusable bags are considered worldwide to be the best option to reduce waste and litter, protect wildlife and conserve resources. Reusable bags have lower associated greenhouse gas emissions than single-use bags and are readily available and affordable for the customer.
- (i) It is the intent of the Council to reduce these negative impacts through the implementation of this Ordinance by continuing to require that retail establishments offer customers a choice between paper bags and single-use plastic checkout bags, and adding a new provision that both prohibits supermarkets from offering single-use plastic checkout bags, and encourages the use of reusable bags.

SECTION 2. Chapter 5.35 (Retail Sales – Requirement for Paper Bags) of Title 5 (Health and Sanitation) of the Palo Alto Municipal Code is hereby repealed in its entirety and restated to read as follows:

Chapter 5.35

RETAIL SALES - REQUIREMENT FOR PAPER CHECKOUT BAGS AND LIMITED PROHIBITION ON SINGLE-USE PLASTIC CHECKOUT BAGS

Sections:

- 5.35.010 Definitions
- 5.35.020 Types of Checkout Bags Permitted at Retail Establishments
- 5.35.030 Types of Checkout Bags Permitted at Supermarkets
- 5.35.040 Operative Dates
- 5.35.050 Exemptions
- 5.35.060 Severability
- 5.35.070 Penalties

5.35.010 Definitions.

- (a) “Checkout Bag” means a bag that is provided by a Retail Establishment at the checkstand, cash register, point of sale or other point of departure for the purpose of

transporting food or merchandise out of the establishment. Checkout Bags do not include bags provided solely for produce, bulk food or meat at a produce, bulk food or meat department within a grocery store, Supermarket, produce or meat market or other similar retail establishment.

- (b) “Recyclable Paper Bag” or “Recyclable Paper Checkout Bag” means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is 100% recyclable overall and contains a minimum of 40% post-consumer recycled content, and (3) displays the word “Recyclable” on the outside of the bag.
- (c) “Retail Establishment” means any commercial business facility engaged in the sale of goods to consumers for ultimate consumption.
- (d) “Reusable Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric, and/or (2) made of durable plastic that is at least 2.25 mils thick and is suitable for reuse.
- (e) “Single-Use Plastic Checkout Bag” means any Checkout Bag made from plastic, excluding Reusable Bags.
- (f) “Supermarket” means a full-line, self service grocery store within the City of Palo Alto with gross annual sales of two million dollars (\$2,000,000.00) or more which sells several lines of dry grocery, canned goods, perishable food, produce and meat and some nonfood items. The City shall use the annual updates of the Progressive Grocer Marketing Guidebook and any computer printouts developed in conjunction with the guidebook to determine gross annual sales.

5.35.020 Types of Checkout Bags Permitted at Retail Establishments

(a) All Retail Establishments within the City of Palo Alto shall provide the following as Checkout Bags to customers: Paper bags only, or a choice between paper or plastic bags. If the Retail Establishment offers customers a choice of paper or plastic bags at the checkstand, cash register or other point of departure, the customer shall be asked whether he or she requires or prefers that the goods purchased be placed in paper or plastic bags. The goods shall be placed in the type of bag requested by the customer.

(b) Nothing in this Section shall be read to preclude Retail Establishments from making Reusable Bags available for sale to customers.

(c) This Section shall not apply to Supermarkets as defined in Section 5.35.010(f).

5.35.030 Types of Checkout Bags Permitted at Supermarkets.

(a) All Supermarkets within the City of Palo Alto shall provide only the following as Checkout Bags to customers: Reusable Bags and/or Recyclable Paper Bags.

(b) Nothing in this Chapter shall be read to preclude Supermarkets from making Reusable Bags available for sale to customers.

(c) All Supermarkets are strongly encouraged to educate their staff to promote Reusable Bags as the best option for Checkout Bags and to post signs encouraging customers to use Reusable Bags.

5.35.040 Operative dates.

All Retail Establishments and Supermarkets shall comply with the requirements of this Ordinance by September 18, 2009.

5.35.050 Exemptions.

The City Manager, or his or her designee, may exempt a Supermarket from the requirements of this Chapter for a period of up to one additional year after the operative date of this Ordinance, upon sufficient showing by the applicant that the provisions of this Chapter would cause undue hardship. This request must be submitted in writing to the City within 60 days of the effective date of this Chapter. The phrase “undue hardship” may include, but is not limited to, the following:

- (a) Situations where there are no acceptable alternatives to Single-Use Plastic Checkout Bags for reasons which are unique to the Supermarket.
- (b) Situations where compliance with the requirements of this Chapter would deprive a person of a legally protected right.

5.35.060 Severability.

If any provision or clause of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter, and clauses of this Chapter are declared to be severable.

5.35.070 Penalties.

- (a) Anyone violating or failing to comply with any of the requirements of this Chapter shall be guilty of an infraction as set forth in Chapter 1.08 of the Palo Alto Municipal Code.
- (b) The remedies and penalties provided in this Section are cumulative and not exclusive.

SECTION 3. The City Council finds that the adoption of this Ordinance is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Section 15070 of the CEQA Guidelines, (“Decision to Prepare a Negative or Mitigated

Negative Declaration”). The Department of Planning and Community Environment prepared an Initial Study for this Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment, with appropriate mitigation. Consequently, a Mitigated Negative Declaration was prepared, made available for public review beginning February 4, 2009 through February 23, 2009, and is hereby adopted.

SECTION 4. This Ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED: March 16, 2009

PASSED: March 30, 2009

AYES: DREKMEIER, KISHIMOTO, KLEIN, MORTON, SCHMID

NOES: BARTON, BURT, YEH

ABSENT: ESPINOSA

ABSTENTIONS:

ATTEST:

Monica J. Binder
City Clerk

Pete Dabunin
Mayor

APPROVED AS TO FORM:

Amy W. Bartell
Deputy City Attorney

APPROVED:

Josh. Hua
City Manager

D. S. [Signature]
Director of Public Works

[Signature]
Director of Administrative Services