

ORDINANCE NO. 2013-

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO REGULATING
THE USE OF PLASTIC CARRYOUT BAGS AND RECYCLABLE PAPER CARRYOUT
BAGS AND PROMOTING REUSABLE BAGS WITHIN THE CITY**

The City Council of the City of San Pablo ordains as follows:

Section 1. Chapter 5.12 is hereby added to the San Pablo Municipal Code, to read as follows:

“5.12.010 Definitions.”

The following definitions apply to this ordinance:

“Carryout Bag” means a bag other than a Reusable 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. Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to the point of sale.

"Customer" means any person purchasing goods from a Retail Establishment.

“Nonprofit Charitable Reuser” 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 (50%) of its revenues from the handling and sale of those donated goods or materials.

"Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

"Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

"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, which is provided to a Customer at the point of sale. Plastic bags include: compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags.

“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.

"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.

“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. Prepared Food does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed or mixed.

"Produce Bag" or "Product 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.

"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.

"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 and 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 words “Reusable and Recyclable” in a highly visible manner on the outside of the bag; (5) and displays the percentage of Postconsumer Recycled Material used; and (6) the name and location of the manufacturer.

"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 capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet;; (3) is machine washable or capable of being cleaned and disinfected; (4) 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 (5) if made of plastic, is a minimum of at least 2.25 mils thick.

“Retail Establishment” means any commercial establishment that sells perishable and 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 city/county limits of the City of San Pablo. Retail Establishments does not include Public Eating Establishments or Nonprofit Charitable Reuser.

“Single-Use Carryout Bag” means a bag other than a Reusable 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. Single-Use Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department with in a store to the point of sale.

5.12.020 Plastic Carryout Bags Prohibited.

- A. No Retail Establishment shall provide a Single-Use Carryout 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 chapter.
- B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

5.12.030 Permitted Bags.

All Retail 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 chapter. Nothing in this ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

5.12.040 Regulation of Recycled Paper Carryout Bags.

- A. Any Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of 5 cents (\$0.05) for each bag provided, except as otherwise provided in this chapter.
- B. Two years after this chapter is enacted, any Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of 10 cents (\$0.10) for each bag provided, except as otherwise provided in this chapter.
- C. All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carryout Bags provided and the total amount charged for the bags.
- D. All monies collected by a Retail Establishment under this ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:
 - 1. Costs associated with complying with the requirements of this chapter,
 - 2. Actual costs of providing Recycled Paper Carryout Bags,
 - 3. Costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of reusable bags, if any.
 - 4. Fund reusable bags give-aways during limited-time store promotions.

5.12.050 Use of Reusable Bags.

- A. All Retail Establishments must provide Reusable Bags to Customers, either:
 - 1. For sale; or
 - 2. At a minimum charge of 10 cents (\$0.10) per bag during limited-time store promotions.
 - 3. Reusable bag giveaway events approved by the City Manager are exempt from the requirements of this section, provided such events are intended to promote the use of reusable bags, and do not exceed 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.

5.12.060 Exempt Customers.

A Retail Establishment may provide at the point of sale, free of charge, either reusable bags or Recycled Paper Carryout Bags or both, at the Retail Establishment'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 of 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, the State Department of Social Services Food Stamp program, or other government-subsidized purchase programs for low-income residents.

5.12.070 Enforcement and violation-penalty.

A. 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 Retail Establishment during business hours. Other city staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager or designee.

B. Any Retail Establishment that violates or fails to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. Violation or failure to comply with the provisions of this chapter shall also be subject to the penalty procedures set forth in Chapter 1.10 of this code, and the Operator of the Retail Establishment shall be liable to the City for the amounts set forth in that Chapter. The use of such procedure is non-exclusive; the City may use any and all other civil, administrative or criminal enforcement procedures to gain compliance with the requirements of this chapter.

C. All fines collected pursuant to the ordinance shall be deposited in the City's Environmental Programs Fund or any similar fund.

5.12.080 Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid.

5.12.090 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.

5.12.100 Effective date.

This ordinance shall become operative on January 1, 2014 and shall be enforced beginning July 1, 2014."

Section 2. The City of San Pablo is a member of the West Contra Costa Integrated Waste Management Authority (RecycleMore) comprised of the cities of San Pablo, Richmond, El Cerrito, Pinole, and Hercules. In the fall of 2011, each member agency of RecycleMore (except Pinole) approved participating in a regional effort to reduce single-use carryout bags. RecycleMore was the lead agency under the California Environmental Quality Act (CEQA), drafted the model ordinance, and ultimately prepared and circulated an Environmental Impact Report (EIR) on the ordinance in consultation with its member cities, including San Pablo. The lead agency has certified the EIR and recommended the Ordinance to the member agencies. As the Lead Agency, RecycleMore filed the Notice of Determination on behalf of the member agencies. The City Council now finds and determines that the City of San Pablo has reviewed and considered the information contained in the EIR, and has reached its own conclusions on whether and how to approve the ordinance. The City agrees with the EIR determination that there are no significant environmental impacts from this ordinance. After adoption of the ordinance, City staff is directed to file a Notice of Determination as the Responsible Agency. Such Notice of Determination shall state that the City considered the EIR as prepared by the lead agency.

Section 3: This ordinance shall become effective thirty (30) days following its adoption and shall be published once within fifteen (15) days after adoption in the West County Times, a newspaper of general circulation in the City of San Pablo, together with the names of those council members voting for or against; or, in the alternative, a summary prepared by the City Attorney's Office shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the city clerk at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance, the city clerk shall publish a summary of the ordinance with the names of those city council members voting for and against the ordinance or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those city council members voting for and against the ordinance or amendment.

If the city clerk determines that it is not feasible to prepare a fair and adequate summary of the ordinance, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city shall be published at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the ordinance, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those city council members voting for and against the ordinance or amendment.

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First read at a regular meeting of the City Council of the City of San Pablo on the 16th day of September, 2013, and finally passed and adopted at a regular meeting of said City Council held on the 8th day of September, 2013, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS
ABSTAIN: COUNCILMEMBERS

ATTEST:

Ted J. Denney, City Clerk

APPROVED:

Genoveva Garcia Calloway, Mayor