

ORDINANCE NO.

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

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**ORDINANCE TO ADD CHAPTER 6.05 TO THE MILLBRAE MUNICIPAL CODE
PROHIBITING THE DISTRIBUTION OF SINGLE-USE CARRYOUT BAGS AND PROHIBITING
THE FREE DISTRIBUTION OF RECYCLED CONTENT PAPER BAGS BY RETAIL
ESTABLISHMENTS AND TO AMEND SECTION 1.05.020 TO DESIGNATE ENFORCEMENT
PERSONNEL**

WHEREAS, it is the City's desire whenever possible to conserve natural resources, to reduce the amount of greenhouse gas emissions, waste, litter and marine pollution, and to protect the public health and welfare, including local wildlife, in order to increase the quality of life for Millbrae's residents and visitors; and

WHEREAS, numerous studies have documented the incidence of single-use carryout bags littering the environment, blocking storm drains that can cause flooding, and fouling beaches; and

WHEREAS, most single-use carryout bags do not biodegrade, but instead photo-degrade, enabling the bags to break down into smaller toxic pieces that enter the food web where animals mistake those materials for food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic carryout bags is a major shift to reusable bags; and

WHEREAS, the City has determined that a minimum charge of \$0.10 per recycled content paper bag would cover the reasonable cost to a store providing the paper bags to its customers; and

WHEREAS, no portion of the charge for recycled content paper bags will be provided to the City so that the City will not receive any revenues from the collection of the paper bag charge; and

WHEREAS, other jurisdictions have required retailers to collect paper bag charges from their customers and these charges have proven very effective at generating a major shift in consumer behavior toward the use of reusable bags and have significantly reduced single-use carryout bag consumption; and

WHEREAS, customers can avoid this charge by using their own reusable bags; and

WHEREAS, in light of the foregoing, the City Council desires to institute three specific regulations in this ordinance. The first is to prohibit the use of single-use carryout bags by Retail Establishments, as defined herein. The second is to require Retail Establishments to charge a minimum of \$0.10 for each recycled content paper bag. The third is to require that Retail Establishments charge for the distribution of any reusable bag except during time-limited promotional events; and

WHEREAS, the City Council will review the effectiveness of the Ordinance after one year of operation and determine if it requires further refinement.

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

SECTION 1. USE OF RESERVED CHAPTER 6.05 TO ADD NEW CHAPTER TO TITLE 6.

Chapter 6.05 hereby is added to the Millbrae Municipal Code to read as follows:

Chapter 6.05

SINGLE-USE CARRYOUT BAG REGULATIONS

Sections:

- 6.05.010** **Definitions**
- 6.05.020** **Single-Use Carryout Bag Regulations**
- 6.05.030** **Exemptions**
- 6.05.040** **Recordkeeping and Verification**
- 6.05.050** **Regulations; Enforcement**

6.05.010 Definitions.

"Customer" means any Person obtaining goods from a Retail Establishment.

"Dry-cleaners" means a Retail Establishment where clothing or other fabrics are dropped off for dry cleaning and/or laundering and where the operation and maintenance of the laundry and dry cleaning equipment may or may not be located on the premises.

"Nonprofit Charitable Reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code, or a distinct operating unit or division of the charitable organization.

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

"Post-consumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer 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 the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed.

"Food Vendor" means a restaurant, or take-out food establishment.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using the authorized and 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 Content 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 that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and the paper bags would either need to be imprinted in a highly visible manner on the outside of the bag indicating they contain at least 40% post-consumer content and the wording Reusable and Recyclable, or Retail Establishments would need to provide alternate verification of that fact.

"Retail Establishment" means a Retail Establishment which is located within or doing business within the geographical limits of the City of Millbrae and 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 Millbrae. Retail Establishment does not include Food Vendors, Dry-cleaners or Nonprofit Charitable Reusers.

"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; (2) has a minimum volume of 15 liters; (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; and (5) made of durable material such as cloth or if plastic is at least 2.25 mils thick. A "reusable bag" may be made of recyclable plastic such as polyethylene or polypropylene.

"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 (1) to transport produce, bakery items, bulk food or meat from a bakery, produce, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag; (4) that hold dry-cleaned garments; (5) that hold live plants; or (6) for small hardware; or (7) to protect delivered newspapers.

6.05.020 Single-Use Carryout Bag Regulations.

- 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 section starting on September 1, 2012.
- B. On or after September 1, 2012, a Retail Establishment shall make available for sale to a Customer a Recycled Content Paper Bag for a minimum charge of \$0.10.
- C. Beginning September 1, 2012, a Retail Establishment may distribute Reusable Bags to Customers, provided that such bags shall be made available to customers for a per bag charge, although such bags may be distributed for free during time-limited store promotions.

- D. Notwithstanding this section, no Retail Establishment may make available for sale a Recycled Content Paper Bag unless the charge for providing the Recycled Content Paper Bag is separately itemized on the sale receipt.

This chapter will become operative on September 1, 2012 for Retail Establishments.

6.05.030 Exemptions.

The regulations of this Chapter will not apply in the following circumstances:

- A. Provision of Single-Use Carryout Bags used by Food Vendors, Dry-cleaners and Non-Profit Charitable Reusers.
- B. Provision of bags without handles to the Customer (1) to transport produce, bakery items, bulk food or meat from a bakery, produce, bulk food or meat department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Content Paper Bag; (4) that hold dry-cleaned garments; (5) that hold live plants; (6) for small hardware; or (7) to protect delivered newspapers.
- C. Notwithstanding any other law, a Retail Establishment may provide customers participating in the California Special Supplemental Food Program for Women, Infants, and Children (WIC) and customers participating in the Supplemental Nutrition Assistance Program (SNAP - formerly food stamps) with Reusable Bags or Recycled Content Paper Bags at no charge at point of sale.
- D. Affected businesses will be exempted from the provisions of this chapter if the City Manager or his/her designee finds that due to the nature of the business where a specialty bag is provided for point of sale purchases, there are no suitable alternatives to Single-Use Carryout Bags or the imposition of the requirements of this chapter would cause undue hardship.

6.05.040 Recordkeeping and Verification.

Every Retail Establishment shall keep complete and accurate records or documents of the provision of any Recycled Paper Bag by the Retail Establishment, for a minimum period of three (3) years from the date of distribution, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Retail Establishment address. The provision of false information to the City, including incomplete records, shall be a violation of this section.

6.05.050 Regulations; Enforcement.

- A. The City Manager or his/her designee will have primary responsibility for enforcement of this chapter. The City Manager or his/her 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, entering the premises of any Retail Establishment to verify compliance in accordance with applicable law.

- B. If the City Manager or his/her designee determines that a violation of this chapter has occurred, he/she will issue a written warning notice to the Retail Establishment for the first violation.
- C. If the Retail Establishment engages in subsequent violations of this chapter, the City may pursue any available legal remedies, including those contained in Chapter 1.05 of this Municipal Code as well as any injunctive or other equitable relief in court to seek redress and enforce the regulations of this chapter.

SECTION 2. AMENDMENT OF SECTION 1.05.020.

Section 1.05.020 of the Millbrae Municipal Code hereby is amended as follows:

Under Item 1, "Community Development," add Chapter 6.05 as an authorized chapter for the Code Enforcement Officer/Community Preservation Specialist.

Under Item 5, "Public Works," add Chapter 6.05 as an authorized chapter for the following positions: Director of Public Works and Industrial Waste Inspector.

SECTION 3. CEQA DETERMINATION.

The City Council finds that this ordinance is subject to environmental review under the provisions of the California Environmental Quality Act (CEQA). The City prepared an Initial Study for the Ordinance, which confirmed that the Ordinance does not have the potential to result in a significant impact on the environment. Consequently, a Negative Declaration was prepared, made available for public review beginning on December 15, 2011 through January 5, 2012. The City hereby adopts the Negative Declaration and certifies that it is adequate under CEQA. The Negative Declaration reflects the independent judgment and analysis of the City Council and the City, and was prepared by City staff. All substantial evidence in the record establishes that the ordinance will not have a significant adverse impact on the environment. The City Manager is directed to arrange for the filing of a Notice of Determination promptly with the County Clerk of San Mateo County.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this 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 the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE: PUBLICATION.

This Ordinance shall be in full force and effect thirty days from and after its passage. At least five days prior to its adoption and within fifteen days after its adoption, a summary of this Ordinance shall be published once in a newspaper of general circulation printed and published in the County of San Mateo and circulated in the City of Millbrae.

INTRODUCED at a regular meeting of the City Council of the City of Millbrae held on January 24, 2012.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Millbrae held on February 14, 2012 by the following roll call vote:

AYES:

NOES:

ABSENT:

MAYOR

ATTEST:

CITY CLERK