



## ADMINISTRATIVE REPORT

**TO:** CITY COUNCIL

**FROM:** SUSAN M. LOFTUS, CITY MANAGER

**PREPARED BY:** PUBLIC WORKS DEPARTMENT - ENGINEERING

**MEETING DATE:** MAY 6, 2013

**SUBJECT:** ORDINANCE ADOPTION – REUSABLE BAGS

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### RECOMMENDATION

Adopt an Ordinance adding Chapter 5.86, Reusable Bags, to the San Mateo Municipal Code Title 5 – Business License and Regulations Code.

### BACKGROUND

On April 15, 2013, the City Council introduced the Reusable Bags Ordinance. At this meeting, the City Council approved the Negative Declaration for the Reusable Bags Ordinance introduced an ordinance to add Chapter 5.86 to the San Mateo Municipal Code. The recommended action will adopt the proposed Municipal Code addition. The ordinance will take effect 30 days after adoption.

### BUDGET IMPACT

Adopting this ordinance will not have a material impact on the City's budget since San Mateo County would provide enforcement of the ordinance requirements.

### ENVIRONMENTAL DETERMINATION

#### *Explanation of the Process*

The County prepared and certified a Program Environmental Impact Report for the proposed ordinance. The Final Program EIR examined the potential environmental impacts associated the adoption of the proposed ordinance in the Program EIR Study Area, which consists of the County, the 18 cities within the County, and the six neighboring cities listed on page 2. Prior to the preparation of the Draft Program EIR, scoping meetings were held throughout the County. The City of San Mateo hosted a scoping meeting on April 19, 2012. The Draft Program EIR was

issued with a 45-day public review period, from June 22, 2012 to August 6, 2012. The Final Program EIR, which incorporates the Draft Program EIR by reference, as well as responses to comments received on the Draft Program EIR, was issued with a 10-day public review period from August 31, 2012 to September 10, 2012. Due to the size of these documents, they are not included as attachments to this staff report but are available online on the Bag Ban webpage on the San Mateo County Environmental Health website at the following link:

<http://smchealth.org/BagBan>

***Findings in the Program EIR***

The Final Program EIR estimated the volume of current plastic bag usage within the Study Area at 552 million bags per year. With the proposed ordinance's regulations in effect, it is estimated that 95 percent of that volume would be replaced by a combination of paper (165,879,409) and reusable (6,911,642) bags, leaving 27 million plastic bags still used each year. In certifying the Final Program EIR, the County Board of Supervisors found the following impacts from adopting the proposed ordinance by the Board of Supervisors:

**Air Quality:** (1) A beneficial impact associated with the reduction in emissions due to a reduction in the total number plastic bags manufactured; and (2) A less than significant impact associated with an increase in emissions resulting from increased truck trips to deliver recycled paper and reusable carryout bags to local retailers.

**Biological Resources:** A beneficial impact associated with the reduction in the amount of single-use plastic bags entering the coastal and bay habitat as litter.

**Greenhouse Gas (GHG) Emissions:** A less than significant impact associated with GHG emissions due to an increase in the manufacturing of single-use paper bags.

**Hydrology/Water Quality:** (1) A beneficial impact associated with a reduction in the amount of litter and waste entering storm drains; and (2) A less than significant impact due to an increase in the use of chemicals associated with an increase in production of recyclable paper bags.

**Utilities and Service Systems:** (1) A less than significant impact due to increased water usage resulting from washing of reusable bags; (2) A less than significant impact due to increased wastewater generation resulting from the washing of reusable bags; and (3) A less than significant impact due to an increase in solid waste generation resulting from increased usage of paper bags.

None of the impacts require mitigation because they are all either beneficial or less than significant.

### ***City of San Mateo Negative Declaration***

The City of San Mateo “tiered” off of the County of San Mateo’s Program EIR and prepared a Negative Declaration to further evaluate the environmental impact of the proposed Reusable Bag Ordinance on City of San Mateo retailers under the provisions of the California Environmental Quality Act (CEQA). The City prepared the Initial Study and Negative Declaration, which identified and discussed potential environmental impacts of the ordinance, and found that the proposed ordinance would not have a significant effect on the environment.

The public review and comment period on the Initial Study/Negative Declaration was March 15, 2013 through April 3, 2013 (20-day public review period). No comments were received during the public comment period for the City’s Negative Declaration.

On April 15, 2013, staff received an email from a resident who objected to the reusable bag ordinance. During public comment at the April 15<sup>th</sup> City Council when the City Council introduced the proposed ordinance, the resident shared his feedback on a study that highlighted the health risks associated with unwashed reusable bags. Staff and Council acknowledged his concerns. Staff and Council shared that based on their review of the study, and the response by health officers about the credibility of the study in question and general bag safety, the City was not in agreement that a reusable bag ordinance presented a community health risk. Staff committed to educating and reminding citizens to wash their reusable bags. In addition, staff emailed the resident the day following the introduction and thanked him for his comments, and reiterated that we are committed to sharing outreach material on reusable bag cleanliness.

Copies of the Initial Study/Negative Declaration are available at City Hall (330 West 20th Ave.), at the City’s Main Library (55 West 3rd Ave, Reference Desk). It is also available online on the City’s website at [www.cityofsanmateo.org/index.aspx?NID=2539](http://www.cityofsanmateo.org/index.aspx?NID=2539).

### **NOTICE PROVIDED:**

The noticing for the April 15, 2013 City Council meeting, where the proposed Municipal Code amendments were first introduced, satisfied all public noticing requirements to date.

### **ATTACHMENTS**

Attachment 1 – Ordinance

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**cc:**      Dean Peterson, Director Environmental Health, County of San Mateo



ORDINANCE NO. 2013-\_\_\_

ADDING CHAPTER 5.86, "REUSABLE BAGS," TO TITLE 5, "BUSINESS LICENSES AND REGULATIONS," OF THE SAN MATEO MUNICIPAL CODE

WHEREAS, the County of San Mateo has adopted an ordinance restricting the use of single-use carry-out bags; and

WHEREAS, the City of San Mateo wishes to adopt a similar ordinance; and

WHEREAS, by adopting this Ordinance, the City is authorizing the County to enforce the City's ordinance and retain collected fines; and

WHEREAS, the use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare; and

WHEREAS, the manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions; and

WHEREAS, single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean; and

WHEREAS, single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance;

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL HEREBY ORDAINS THAT:

**Section 1.** Chapter 5.86, "Reusable Bags," is added to Title 5, "Business Licenses and Regulations," of the San Mateo Municipal Code to read:

**Chapter 5.86**

**REUSABLE BAGS**

- Section 5.86.010**      **Definitions.**
- Section 5.86.020**      **Single-use carry-out bag.**
- Section 5.86.030**      **Recordkeeping and inspection.**
- Section 5.86.040**      **Violation.**
- Section 5.86.050**      **Authorization for County enforcement.**
- Section 5.86.060**      **Administrative fines.**

**5.86.010 DEFINITIONS.**

- (a) **"Customer"** means any person obtaining goods from a retail establishment.
- (b) **"Garment Bag"** means a travel bag made of pliable, durable material, with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

- (c) “**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 of its revenues from the handling and sale of those donated goods or materials.
- (d) “**Person**” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- (e) “**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. “Prepared food” does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.
- (f) “**Public eating establishment**” means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.
- (g) “**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 that contains no old growth fiber and a minimum of forty percent post-consumer recycled content; is one hundred percent recyclable; and has printed in a highly visible manner on the outside of the bag the words “reusable” and “recyclable,” the name and location of the manufacturer, and the percentage of post-consumer recycled content.
- (h) “**Retail establishment**” 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 San Mateo. “Retail establishment” does not include public eating establishments or nonprofit charitable reusers.
- (i) “**Reusable bag**” means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag that meets the above criteria is also a “reusable bag,” whether or not it has handles or not.
- (j) “**Single-use carry-out bag**” means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. “Single-use carry-out bags” do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag.

**5.86.020 SINGLE-USE CARRY-OUT BAG.**

- (a) No retail establishment shall provide a single-use carry-out 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.
- (b) On or before December 31, 2014, a retail establishment may make available for sale to a customer a recycled paper bag or a reusable bag for a minimum charge of ten cents.
- (c) On or after January 1, 2015, a retail establishment may make available for sale to a customer a recycled paper bag or reusable bag for a minimum charge of twenty-five cents.
- (d) Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.
- (e) A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals; a customer participating in the California Special Supplement 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; a customer participating in the Supplemental Food

Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

**5.86.030 RECORDKEEPING AND INSPECTION.** Every retail establishment shall keep complete and accurate records or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment for a minimum period of three years from the date of purchase and sale, which record shall be available for inspection at no cost to the City or County during regular business hours by any City or County employee authorized to enforce this part. 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, including incomplete records or documents, to the City or the County shall be a violation of this section.

**5.86.040 VIOLATION.** It shall be unlawful to violate this Chapter.

**5.86.050 AUTHORIZATION FOR COUNTY ENFORCEMENT.** In addition to the City's enforcement mechanisms set forth in Title 1 of this Code, the City of San Mateo authorizes the County of San Mateo's Environmental Health Division to enforce this Chapter of the Municipal Code, including, without limitation, the authority to hold hearings, issue administrative fines, and retain collected fines.

**5.86.060 ADMINISTRATIVE FINES.** In the event that the County enforces this Ordinance on the City's behalf within the City limits, the following administrative fine provisions apply:

- (a) Grounds for Fine. A fine may be imposed upon findings made by the San Mateo County Director of the Environmental Health that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.
- (b) Amount of Fine. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative fine as follows:
  - (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
  - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
  - (3) A fine not exceeding five hundred dollars (\$500.00) for the third and subsequent violations;
  - (4) Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.
- (c) Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the San Mateo County Director of the Environmental Health contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the San Mateo County Director of the Environmental Health shall be based upon a finding that the above-listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.
- (d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the San Mateo County Director of the Environmental Health after the hearing, either the City or the County is authorized to bring an action to collect any unpaid administrative fine.

**Section 2. SEVERABILITY.** In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be

deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

**Section 3. ENVIRONMENTAL REVIEW.** In accordance with the California Environmental Quality Act (CEQA), an environmental impact report was prepared by the County of San Mateo, which analyzes the environmental impacts of adopting this ordinance in all cities within the County, including the City of San Mateo. This environmental impact report is available on-line at [www.cityofsanmateo.org](http://www.cityofsanmateo.org), and a hard copy is available at San Mateo City Hall, 330 West 20<sup>th</sup> Avenue. Because the City of San Mateo is the lead agency for purposes of adopting the City's ordinance, the City prepared and circulated a negative declaration "tiering" off of the County's Program Environmental Impact Report in accordance with CEQA Guidelines section 15152. The City's Negative Declaration concluded that adoption of this Ordinance in the city would not result in any significant impacts to the environment.

**Section 4. EFFECTIVE DATE.** This Ordinance shall take effect 30 days after its adoption.

**Section 5. PUBLICATION.** This Ordinance shall be published in summary in the Examiner Peninsula Edition, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the Charter and shall be effective 30 days after the date of adoption.