

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW PART 13 TO BAN SINGLE-USE CARRYOUT BAGS, AND PROHIBIT THE FREE DISTRIBUTION OF RECYCLED PAPER BAGS, BY RETAIL ESTABLISHMENTS, TO BE EFFECTIVE JANUARY 1, 2012**

**WHEREAS**, on November 17, 2010, the Planning Commission of the City of San José, pursuant to the provisions of the California Environmental Quality Act of 1970, together with guidelines promulgated pursuant thereto and Title 21 of the San José Municipal Code, all as amended to date, certified that certain environmental impact report prepared for a Single-Use Carryout Bag Ordinance, under File No. PP-09-193 (the “EIR”); and

**WHEREAS**, on December 14, 2010, the City Council of the City of San Jose conducted an administrative hearing on an Appeal of the Planning Commission’s certification of the EIR for the Single-Use Carryout Bag Ordinance, under File No. PP-09-193, to add Part 13 to Chapter 9.10 of Title 9 of the San Jose Municipal Code to ban single-use carryout bags, and prohibit the free distribution of recycled paper bags by retail establishments; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the approval and adoption of this Ordinance; and

**WHEREAS**, this Council has adopted Resolution No. 75688 setting forth the findings of the decision-making body in connection with the environmental impacts identified in the EIR in connection with the approval and adoption of this Ordinance;

**NOW, THEREFORE,** BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 9.10 of Title 9 of the San Jose Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read as follows:

**Part 13**  
**Single-Use Carryout Bag**

**9.10.2010 Definitions**

The definitions set forth in this Section shall govern the application and interpretation of this Part 13.

- A. “Customer” means any Person obtaining goods from a Retail Establishment.
- B. “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.
- C. “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. “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.

- E. “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 (40%) post-consumer recycled content; is one hundred percent (100%) 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.
- F. “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.
- G. “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 José. Retail Establishment does not include Public Eating Establishments or Nonprofit Charitable Reusers.
- H. “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 millimeters thick and is specifically designed and manufactured for multiple reuse.
- 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 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 provided solely (1) to transport produce, bulk food or meat from a produce, bulk food or meat 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.

**9.10.2020 Single-Use Carryout Bag**

- 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.
- B. On or before December 31, 2013, a Retail Establishment may make available for sale to a Customer a Recycled Paper Bag for a minimum charge of ten cents (\$0.10).
- C. On or after January 1, 2014, a Retail Establishment may make available for sale to a Customer a Recycled Paper Bag for a minimum charge of twenty-five cents (\$0.25).
- D. Notwithstanding this Section, no Retail Establishment may make available for sale a Recycled Paper Bag unless the amount of the sale of the Recycled Paper Bag is separately itemized on the sale receipt.
- E. A Retail Establishment may provide 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; and 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, with one (1) or more Recycled Paper Bags at no cost through December 31, 2013.

**9.10.2030 Recordkeeping and Inspection**

Every Retail Establishment shall keep complete and accurate record or documents of the purchase and sale of any Recycled Paper Bag by the Retail Establishment, for a minimum period of three (3) years from the date of purchase and sale, 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 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 shall be a violation of this Section.

SECTION 2. This ordinance shall be effective on January 1, 2012.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of December, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk