

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
ESTABLISHING SAN RAFAEL MUNICIPAL CODE CHAPTER 10.94 REGULATING  
THE USE OF SINGLE USE CARRYOUT BAGS**

**WHEREAS**, according to the U.S. Environmental Protection Agency, 32 million tons of plastic waste was generated in 2011, representing 12.7 percent of the total municipal solid waste stream, and only 8 percent of the total plastic waste generated in 2011 was recovered for recycling; and

**WHEREAS**, according to the California Integrated Waste Management Board, less than 5 percent of all single use plastic bags are recycled in California; and

**WHEREAS**, plastic bags are not biodegradable, are lightweight, and blow about easily, often becoming litter in the environment causing harm to wildlife and clogging storm drains; and

**WHEREAS**, according to the 2013 Marin County Grand Jury report entitled “Holding the Bag”, Redwood Landfill, Inc. has to hire full time personnel whose main task is to capture plastic bags from blowing off the site and polluting the surrounding area; and

**WHEREAS**, according to the California Waste Management Board, California taxpayers spend nearly \$25 million annually to collect plastic bags and send them to the landfill; and

**WHEREAS**, according to the California Coastal Commission, up to 80 percent of all marine debris is plastic, which can never biodegrade, and plastic bags were the fourth most prevalent type of litter (over 1 million bags) picked up by volunteers during the Ocean Conservancy’s 2012 International Coastal Cleanup Day; and

**WHEREAS**, Bay Area plastic bag reduction ordinances have resulted in significant reductions of plastic bag litter in the environment, including 59% to 90% reductions of litter in storm drains, neighborhoods, creeks, rivers, and beaches recorded in San Jose and Santa Cruz; and

**WHEREAS**, according to the California Coastal Commission, Plastic marine debris affects at least 267 species worldwide, including 86 percent of all sea turtle species,, which often mistake plastic bags for jellyfish; and

**WHEREAS**, according to Californians Against Waste, at least 69 jurisdictions in California have adopted ordinances banning the use of single-use plastic bag covering at least 90 municipalities, with local and national businesses successfully replacing plastic bags with affordable, durable, recyclable products and most importantly, reusable bags; and

**WHEREAS**, on April 6, 2009 the City Council of the City of San Rafael adopted the San Rafael Climate Change Action Plan (CCAP), which incorporates programs to achieve reductions in community greenhouse gas (GHG) emissions, including, but not limited to: a) Program LF11, which calls for adoption of a Zero Waste Goal and a Zero Waste Strategic Plan to reduce land filling of waste; and b) Program LF17 which directs the City to investigate options for banning non-recyclable single-use items such as plastic bag; and

**WHEREAS**, the City Council adopted Resolution No. 13212 on July 18, 2011, amending the San Rafael General Plan 2020 to add a new Sustainability Element, which includes a Policy SU-9 for adoption of a Zero Waste goal and implementation of programs to reduce material consumption and waste generation, with a subsection SU-9h which specifically calls for banning single-use items such as plastic bags; and

**WHEREAS**, the City Council on August 1, 2011 adopted a zero-waste resolution, No. 13217, committing itself to taking actions to achieve a waste diversion goal of 80 percent by 2012 and 94 percent by 2025; and

**WHEREAS**, it is the desire of City of San Rafael to conserve resources, reduce the amount of GHG emissions, waste, litter and marine pollution and to protect the public health and welfare as well as to protect wildlife, all of which activities increase the quality of life for San Rafael residents and visitors;

**WHEREAS**, the City Council has previously adopted a Resolution Certifying a Final Environmental Impact Report and Adopting an Environmental Impact Report Addendum regarding a single use carryout bag reduction ordinance, and a Resolution Making Findings of Fact supporting such an ordinance; and

**Whereas**, it is the intention of the City Council to review this ordinance in one year in order to apply it to all retailers, including restaurants, and increase the charge for recyclable paper bags to twenty-five cents per bag, as studied in Alternative 7 of the Final Environmental Impact Report;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**DIVISION 1.**

The City Council of the City of San Rafael finds as follows:

1. The proposed ordinance to regulate single use carryout bags is consistent with the policies and programs of the San Rafael General Plan 2020, including Conservation Element Policy CON-17 (Resource-Efficient Organizations and Businesses), Policy CON-21 (Waste Reduction/Recycling), Program CON-21a (Recycling), Program CON-21e (Recycling), and Sustainability Element Policy SU-9 (Zero Waste) and Program SU-9i (Commercial and Multi-Family Recycling) in that the ban of use of these products will result in greater use of reusable, recyclable and biodegradable materials, which would also result in a reduction in the waste stream.
2. The public health, safety and general welfare will not be adversely impacted by the proposed ordinance to regulate single use carryout bags. Rather, the public health, safety and general welfare will be enhanced and further protected as the ban for use of this material would reduce land-filling of waste products, reduce long-lasting litter and reduce public clean-up costs.

**DIVISION 2.** Chapter 10.94 is hereby added to the Municipal Code of the City of San Rafael to read as follows:

**CHAPTER 10.94. SINGLE USE CARRY OUT BAGS**

<b>Sections:</b>	10.94.010	Purpose.
	10.94.020	Definitions.
	10.94.030	Plastic carry out bags prohibited.
	10.94.040	Permitted bags.
	10.94.050	Regulation of recyclable paper carryout bags.
	10.94.060	Use of reusable bags.
	10.94.070	Exempt customers.
	10.94.080	Self-reporting obligation.
	10.94.090	Operative date.
	10.94.100	Enforcement and penalties.

**10.94.010 Purpose.**

The purpose of the ordinance is to reduce the amount of plastic bag pollution in the environment, to reduce the impacts of paper bags which cause other forms of pollution and greenhouse gas emissions, and to encourage reusable bags by consumers and retailers.

**10.94.020 Definitions.**

The following definitions apply to this Chapter:

- A. "Checkout bag" means a carryout bag intended to convey or protect goods, products or packaged food products provided by a store to a customer at the point of sale.
- B. "Customer" means any person purchasing goods from a store or from a vendor at a public event.
- C. "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.
- D. "Plastic carryout bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags or product bags.
- E. "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.
- F. "Product bag" means any bag without handles used exclusively to carry produce, meats, or other food items such as bulk foods to the point of sale inside a store or at a public event, or to prevent such food items from coming into direct contact with other purchased items.
- G. "Public event" means an event which is open to and may be attended by the general public, including but not limited to such events as farmers' markets, parades, craft fairs,

festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.

- H. “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.
- I. “Recyclable paper carryout bag” means a paper bag 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%) post-consumer recycled material; (3) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (4) is accepted for recycling in curbside programs in the City of San Rafael; (5) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of postconsumer recycled material used; and (6) displays the word “Recyclable” in a highly visible manner on the outside of the bag.
- J. “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 is made from a material that can be cleaned or disinfected; (4) does not contain lead, cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer, the location (country) where the bag was manufactured, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used, if any; and (6) if made of plastic, is a minimum of at least 2.25 mils thick.
- K. “Single Use Carryout Bag” means a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale that is not a reusable bag and does not meet the requirements of a reusable bag. A “single use carryout bag” does not include a “product bag” or a bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the California Business and Professions Code to a customer purchasing a prescription medication.
- L. “Store” means a retail establishment located within the incorporated area of the City of San Rafael that meets any one or more of the following definitions:
  - 1. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
  - 2. A store of at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code,

and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or

3. A drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

**10.94.030 Plastic carryout bags prohibited.**

- A. No operator of a store shall provide to any customer a plastic carryout bag.
- B. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to product bags.
- C. No vendors at a public event shall provide to any customer a plastic carryout bag, except product bags.

**10.94.040 Permitted bags.**

All operators of stores and vendors at a public event shall provide or make available to a customer only recyclable 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 Chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

**10.94.050 Regulation of recyclable paper carryout bags.**

- A. Any operator of a store or vendor at a public event that provides a recyclable paper carryout bag to a customer shall charge the customer at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. The City Council may increase the ten cent (\$0.10) minimum charge by Resolution.
- C. No operator of a store or vendor at a public event shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- D. All operators of stores and vendors at public events shall post signage clearly indicating the per bag charge for recyclable paper carryout bags.
- E. All operators of stores shall indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- F. All monies collected by an operator of a store or a vendor at a public event for recyclable paper bags under this Chapter shall be retained by the operator of the store or the vendor.

**10.94.060 Use of reusable bags.**

- A. All operators of stores shall make reusable bags available for purchase by a customer, and any operator of a store or vendor at a public event that provides a reusable bag to a customer shall charge at least ten cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. The City Council may increase the ten cent (\$0.10) minimum charge by Resolution.
- C. An operator of a store may provide reusable bags to customers at no cost until three (3) months after the effective date of the ordinance. On and after three (3) months after effective date of the ordinance, an operator of a store may provide reusable bags to customers at no cost only when combined with a time-limited store promotional program. Such events shall not exceed a total of 30 days within any consecutive 12-month period.
- D. Each operator of a store or vendor at a public event is strongly encouraged to educate its staff to promote reusable bags and to post signs encouraging customers to use reusable bags.
- E. No operator of a store or vendor at a public event shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection A, except as otherwise provided in this Chapter.
- F. All operators of stores shall post signage clearly indicating the per bag charge for reusable bags.
- G. All operators of stores shall indicate on the customer receipt the number of reusable bags provided and the total amount charged for the bags.
- H. Each operator of a store or vendor at a public event is strongly encouraged to charge for a reusable bag at least what it cost to procure the reusable bags in order to encourage maximum reusability and not cause them to be treated as throw-away.
- I. All monies collected by an operator of a store or vendor at a public event for reusable bags under this Chapter shall be retained by the operator of the store or vendor at the public event.

**10.94.070 Exempt customers.**

All operators of stores or vendors at public events shall provide at the point of sale, free of charge, either reusable bags or recyclable paper carryout bags or both, at the store'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.

**10.94.080. Self-reporting obligation.**

All operators of stores and vendors at public events shall submit to the City Manager a certification of compliance in a form as prescribed by the City Manager's Office by mail or electronic means within thirty (30) days after the operative date of this Chapter, or within 30 days after commencing business in the City, whichever is sooner. This form shall include the name and title of the person reporting, the store or vendor name, and pertinent telephone, email and address contact information.

**10.94.090 Operative date.**

This Chapter shall become operative on and after September 15, 2014.

**10.94.100 Enforcement and penalties.**

- A. The City Manager and such code enforcement officials as he or she may designate shall be responsible for enforcement of this Chapter. The City Manager 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, entering the premises of any store during business hours, and imposing penalties for violations.
- B. For a first violation of this Chapter, the City Manager or his or her designee shall issue a written warning notice to the operator of a store or to the vendor at public event that a violation has occurred and the potential penalties that will apply for future violations.
- C. It is unlawful for any operator of a store or vendor at a public event to violate or fail to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation..
- D. A violation of the provisions of this Chapter is subject to enforcement by the provisions of Title 1 (General Provisions), Chapters 1.40, 1.42, 1.44 and 1.46 of this Code, and may be prosecuted as a misdemeanor or infraction as set forth in Section 1.42.010 of this Code.
- E. Each day that a violation of this Chapter continues shall be deemed a separate violation.

**DIVISION 3.**

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.

**DIVISION 4.**

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

**DIVISION 5.**

This Ordinance shall be published once, in full or summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

\_\_\_\_\_  
GARY O. PHILLIPS, Mayor

ATTEST:

\_\_\_\_\_  
ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was read and introduced at a Regular meeting of the City Council of the City of San Rafael, held on the 18<sup>th</sup> day of February, 2014, and ordered passed to print by the following vote, to wit:

AYES:            COUNCILMEMBERS:

NOES:           COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

and it will come up for adoption as an Ordinance of the City of San Rafael at a Regular meeting of the City Council to be held on the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
ESTHER C. BEIRNE, City Clerk