

[jurisdiction-specific header here; remainder to be formatted and renumbered as needed]

MODEL COUNTYWIDE ORDINANCE FOR JURISDICTIONS IN SANTA CLARA COUNTY RELATING TO REGULATION OF SINGLE-USE CARRYOUT BAGS

SECTION 1. Findings:

- (a) Single-use carryout bags provided by stores impose hidden costs on consumers, local governments, the state, taxpayers, and the environment.
- (b) Requiring stores to end the subsidy of single-use carryout bags and charge their full economic and environmental costs will provide consumers with an appropriate market signal to make informed decisions regarding carryout bag reduction and reuse options.
- (c) Requiring stores to charge and remit a customer-based fee for the distribution of single-use carryout bags will help the state and local governments to offset the environmental and social costs of single-use carryout bags.
- (d) The amount and nature of the customer-based fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of single-use carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the litter of single-use carryout bags, cleaning up the litter caused by single-use carryout bags, and encouraging the reduction of the use of single-use carryout bags.
- (e) [other findings related to the Problem Statement as approved by the Commission at their 10/22/08 meeting, all as determined to be useful by County Counsel or City Attorneys]

SECTION 2. Division X of Title Y of the [jurisdiction's county or municipal] Code is amended by adding a new Chapter Z to be numbered and entitled and to read as follows:

CHAPTER Z. SINGLE-USE CARRYOUT BAGS

1. Definitions. For purposes of this chapter, the following definitions shall apply:

(a) Bag Pollution Cleanup Fee

"Bag Pollution Cleanup Fee" means the fee imposed pursuant to Section 2.

(b) Commission

"Commission" means the Recycling and Waste Reduction Commission of Santa Clara County.

(c) Fund

"Fund" means the Bag Pollution Cleanup Fund, established pursuant to subdivision (a) of Section 5.

(d) Green carryout bag

(1) "Green carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and meets all of the following requirements:

(A) Is composed of at least 40 percent post-consumer recycled content material.

(B) Is accepted in 80% of curbside recycling programs in Santa Clara County.

(C) Is capable of composting within 180 days, as determined by the Commission [or the City/Town/County Manager/Administrator/Director of Finance].

(2) "Green carryout bag" does not include a reusable bag, as defined in this section.

(e) Reusable bag

"Reusable bag" means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse..

(f) Single-use carryout bag

"Single-use carryout bag" means a single-use carryout bag that is provided by a store to a customer at the point of sale and that is not a reusable bag, as defined in this section. For the purposes of this chapter, "single-use carryout bag" does not include plastic or paper bags that are used by customers or the store to protect or contain meat, fresh produce, food prepared or packaged at the establishment, or other goods that must be protected from moisture, damage, or contamination, and that are placed in a single-use carryout bag at the point of sale.

(g) [Administrator]

"[Administrator]" means the [designated official] of [jurisdiction].

(h) Store

"Store" means a retail establishment that provides single-use carryout bags (including green carryout bags) to its customers as a result of the sale of a product. The following are excluded from the definition of "store": restaurants, take-out food establishments, or any other businesses that receive 90% or more of their revenue from the sale of food prepared or packaged at the establishment.

2. Bag Pollution Cleanup Fee

(a) (1) Except as provided in Section 3, on and after October 1, 2009, a store shall not provide a single-use carryout bag, including a green carryout bag, to a customer at the point of sale, unless the store charges and collects from the customer the Bag Pollution Cleanup Fee of twenty-five cents (\$0.25) per bag.

(2) Before January 1, 2014, the total amount charged to a customer pursuant to paragraph (1) shall not exceed two dollars (\$2.00) per transaction and on and after January 1, 2014, this restriction shall not apply.

(b) The amount charged pursuant to paragraph (1) of subdivision (a) shall be separately stated on the receipt provided to the customer at the time of sale, and shall be identified as the Bag Pollution Cleanup Fee.

(c) (1) A store charging a fee pursuant to subdivision (a) may retain a portion of the fee, as specified in paragraph (2), in an amount necessary to reimburse the store's costs associated with complying with this chapter, in accordance with Section 4.5. The store shall remit the remainder of the fee to the [jurisdiction].

(2) A store may retain not more than five cents (\$0.05) of the fee for each single-use carryout bag that is not a green carryout bag. For a single-use carryout bag that is a green carryout bag, a store may retain not more than ten cents (\$0.10) of the fee for each bag.

(d) Any other transaction fee charged by a store in relation to providing a single-use carryout bag shall be identified separately from the Bag Pollution Cleanup Fee.

3. Exemption of WIC and Food Stamp transactions

Before January 1, 2014, the fee imposed pursuant to Section 2 shall not be charged to either of the following for any transaction that is not combined with other purchases:

(a) A customer participating in the Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code).

(b) A customer participating in the State Department of Social Services Food Stamp Program.

4. Remittance of fee

A store that collects the Bag Pollution Cleanup Fee pursuant to Section 2 shall calculate the amount of money collected and, after deducting the amount specified in subdivision (c) of

Section 2, shall, in accordance with Section 6, remit the remainder to the [jurisdiction] for deposit into the fund.

5. Store use of retained portion of fee

A store charging a fee pursuant to Section 2 shall use the amount of the fee retained pursuant to subdivision (c) of Section 2 for all of the following:

- (a) Reimbursement of the store's costs associated with the collection and remittance of the fee pursuant to Sections 2 and 4.
- (b) The development of in-store educational materials encouraging the use of reusable bags for distribution to customers.
- (c) The development and implementation of an educational campaign encouraging the use of reusable bags, including, but not limited to, public service announcements.
- (d) Reimbursement of the store's costs associated with providing reusable bags to customers participating in programs described in subdivisions (a) and (b) of Section 3.
- (e) Reimbursement of the store's costs associated with providing reusable bags as donations to community organizations, nonprofit organizations, and other similar entities.
- (f) Reimbursement of the store's costs associated with customers' choice to use green carryout bags.

6. Bag Pollution Cleanup Fund

- (a) The Bag Pollution Cleanup Fund is hereby established. All fees collected pursuant to this chapter shall be deposited in the fund.
- (b) The moneys in the fund shall be expended, upon appropriation in the manner and in the order of priority as follows:
 - (1) to reimburse the [jurisdiction]'s costs of implementing Sections 7 through 10.
 - (2) for purposes of programs that encourage and support recycling of single-use carryout bags and single-use carryout bag pollution prevention, cleanup, abatement, and outreach programs.

7. Administration of Single Use Carryout Bag Fee

- (a) The [Administrator] shall administer and collect the Bag Pollution Cleanup Fee
- (b) The [Administrator] may adopt rules and regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.
- (c) The Bag Pollution Cleanup Fee shall be due and payable quarterly on or before the 25th day of the month following each calendar quarter. Payments shall be accompanied by a form, as prescribed by the [Administrator], including, but not limited to, electronic media.
- (d) The [Administrator] may require the payment of the fee for other than quarterly periods.

8. Administration and enforcement

Except as otherwise provided by this chapter, the [Administrator] or designee shall administer and enforce this chapter.

9. Enforcement

Enforcement of this chapter shall be by the County of Santa Clara Weights and Measures Division [and/or by jurisdiction's agencies to be named] in the following manner:

- (a) The Division of Weights and Measures will conduct an initial inspection of each store during the first year this chapter is operative. The inspection shall consist of a survey in which the store manager will demonstrate compliance with this chapter.

- (b) Noncompliance will result in a Notice of Violation and a re-inspection shall occur within 90 days. If the store is in compliance upon first re-inspection, the Notice of Violation will remain in effect for a period of no less than one (1) year and re-inspection may occur within 12 months.
- (c) Failure to comply after second re-inspection will result in a fine no less than \$100 for the first offense and a re-inspection shall occur within 90 days. Notice of Violation will remain in effect for a period of no less than two (2) years.
- (d) A second offense shall result in a fine no less than \$500; violations thereafter will result in a maximum of \$1,000 per violation.

10. Records

Stores shall retain their records for a minimum of three years from the date on which any fee or report based on such records is submitted as provided in Sections 4, 5, or 7. Records shall be available to County of Santa Clara Department of Agriculture Commissioner, Integrated Waste Management Program Manager, Weights and Measures Program Manager and/or their designees [and/or by jurisdiction's agencies to be named].

11. Operative Date

This chapter shall become operative on October 1, 2009.

[jurisdiction-specific approval format]