

ORDINANCE 2219

ORDINANCE OF THE TOWN OF LOS GATOS TO ADD A NEW ARTICLE IV TO CHAPTER 11 TO THE TOWN OF LOS GATOS MUNICIPAL CODE ENTITLED "SINGLE-USE CARRY-OUT BAGS"

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Chapter 11 of the Los Gatos Town Code is amended to add a new Article IV (11.40.010 through 11.040.070) shall read as fully set forth on Exhibit A.

SECTION II

In the event that any part of this ordinance is held to be invalid, the invalid part or parts shall be severed from the remaining portion of the ordinance which shall remain in full force and effect.

SECTION III

It is the intent of the Town Council of the Town of Los Gatos to supplement State and Federal law and to not duplicate or contradict such law, and this ordinance shall be construed consistently with that intention. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsection, sentences, clauses, or phrases be declared unconstitutional.

SECTION IV

On October 23, 2012, the County of San Mateo certified a Final Program Environmental Impact Report ("EIR") that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the County of San Mateo as well as neighboring jurisdictions. The EIR was certified pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.* It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the Town of Los Gatos acts as a responsible agency for adoption of this ordinance within the Town of Los Gatos. Upon independent review of the EIR and all evidence before it, the Town Council makes the following findings:

1. The Final Program Environmental Impact Report ("Final Program EIR") is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations, Section 15000 *et seq.* ("CEQA Guidelines"), and the public comment period; and
2. On the basis of the Initial Study, Notice of Preparation, Final Program EIR, and public comment received by both the County of San Mateo and the Town of Los Gatos, there is no

substantial evidence that the project as proposed will have a significant effect on the environment;
and

3. Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the Town Council of the Town of Los Gatos; and

4. None of the conditions listed in CEQA Guidelines, Section 15162(a) are applicable to adoption of this ordinance, and adoption of this ordinance is an activity that is part of the program examined by the County's Final Program EIR and is within the scope of the project described in the County's Final Program EIR; and

5. A Notice of Determination shall be filed pursuant to CEQA Guidelines, Sections 15094 and 15096.

SECTION V

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on August 19, 2013, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on September 3, 2013. This ordinance shall be effective on February 3, 2014.

COUNCIL MEMBERS:

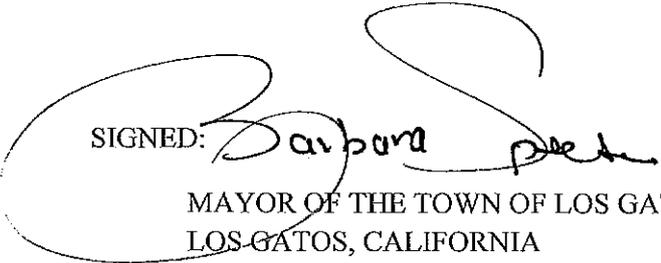
AYES: Marcia Jensen, Steven Leonardis, Diane McNutt, Joe Pirzynski, and Mayor Barbara Spector

NAYS:

ABSENT:

ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ARTICLE IV. SINGLE-USE CARRY-OUT BAGS

Sec. 11.40.010	Findings and purpose.
Sec. 11.40.015	Definitions.
Sec. 11.40.020	Implementation Date.
Sec. 11.40.030	Single use carry-out bag.
Sec. 11.40.040	Record keeping and Inspection.
Sec. 11.40.050	Exemptions.
Sec. 11.40.060	Enforcement
Sec. 11.40.070	Severability

Sec. 11.40.010 Findings and purpose.

The Town Council finds and determines that:

- (a) The use of single-use, carry-out bags by consumers at retail establishments is detrimental to the environment, public health, and welfare.
- (b) The manufacture and distribution of single-use, carry-out bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- (c) Single-use, carry-out bags contribute to environmental problems, including litter in storm drains, creeks, the Bay, and the ocean.
- (d) Single-use, carry-out bags provided by retail establishments impose unseen costs on consumers, local governments, the state, and taxpayers, and constitute a public nuisance.

This Council does, accordingly, find and declare that it should restrict the free distribution of single-use, carry-out bags.

Sec. 11.40.015 Definitions.

Customer means any person obtaining goods from a retail establishment.

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.

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.

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

Prepared food means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which requires 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.

Public eating establishment means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of prepared food to be eaten on or off its premises.

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.

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 consumer; and is located within or doing business within the geographical limits of the Town of Los Gatos. *Retail establishment* does not include public eating establishments or nonprofit charitable reusers.

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 may meet the above criteria regardless of whether it has handles or not.

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 retail establishment, 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 retail establishment 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.

Sec. 11.40.020 Implementation Date.

This Chapter shall be effected and implemented beginning on February 3, 2014.

Sec. 11.40.030 Single-use carry-out bag.

- A. No person or 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 Chapter 11, Article IV.
- B. On or before December 31, 2014, a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents (\$.10) per bag.

- C. On or after January 1, 2015, retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents (\$0.25) per bag.
- 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 sales receipt.
- E. A retail establishment may provide (1) one or more recycled paper bags at a 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.

Sec. 11.40.040 Recordkeeping and inspection.

Every retail establishment shall keep a record 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 (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the Town during regular business hours by any Town 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 within the Town of Los Gatos. The provision of false information, including incomplete records or documents to the Town, shall be a violation of this Chapter.”

Sec. 11.40.050 Exemptions.

The provisions of this Chapter shall not apply in the following circumstances where:

- (a) A plastic or paper carryout bag with or without handles is provided by a public eating establishment to transport prepared food;
- (b) A plastic or paper bag with or without handles is provided by a nonprofit charitable reuser;
- (c) A plastic or paper bag without handles is provided to transport prepared food, produce, bulk food, or meat from a department within a retail establishment to the point of sale;
- (d) A plastic or paper bag without handles is provided to hold prescription medication dispensed from a pharmacy;
- (e) A plastic or paper bag without handles is used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled bag;

- (f) A garment bag or garment cover used to protect and transport clothing or other textiles.

Sec. 11.40.060: Enforcement and violation--penalty.

(a) The Town Manager, or his or her designee, has primary responsibility for enforcement of this Chapter. The Town 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, issuing fines, and entering the premises of any retail establishment during business hours.

(b) If the Town Manager or his or her designee determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a retail establishment that a violation has occurred and the potential penalties that will apply for future violations.

(c) Any retail establishment that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

(d) If a retail establishment has subsequent violations of this Chapter, the following penalties as contained in Resolution 2004-97, will be imposed and shall be payable by the operator of the retail establishment:

- (1) One hundred dollars (\$100.00) for a first violation;
- (2) Two hundred dollars (\$200.00) for a second violation within one year;
- (3) Five hundred dollars (\$500.00) for each additional violation within one year.

(e) Any recipient of an administrative citation may contest the citation by completing a request for hearing form and returning it to the Town within thirty (30) days from the date of the administrative citation, as described in section 1.30.035 of this Code.

Sec. 11.40.070: Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed separate, distinct and independent provision and such decision shall not affect the validity of the remaining portion thereof.