

Model Ordinance Banning Single-use Carryout Bags and Requiring a \$0.10 Charge on Disposable Carryout Bags¹

AN ORDINANCE of the [insert name of jurisdiction] AMENDING [if ordinance is amended prior legislation, insert reference]

Section 1. Findings and Purpose

The [insert relevant legislative body] finds and determines that:

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

The [insert relevant legislative body] does therefore find and declare that it should restrict the use of single-use carryout bags.

Section 2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

- a) “Department” means [relevant department].
- b) “Director” means the Director of [relevant city department].
- c) “Person” means an individual, trust, firm, joint stock company, corporation, cooperative, partnership, or association.
- d) “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 byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- e) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:
 - 1) Contains only post-consumer recycled fiber, and fiber from sources accredited by the Forest Stewardship Council or other independent certification organization, as approved by the Director.

¹ Based the State of California law regulating single-use carryout bags, and on ordinances in San Francisco and San Mateo County, CA, and Seattle, WA. In this ordinance, stores keep all moneys from the \$0.10 per bag charge. PSI developed this potential model based on actual legislation. **The specific language used may not necessarily reflect the views of PSI, and no official endorsement should be inferred.**

- 2) Contains a minimum of 40% post-consumer recycled content. The Department may modify the requirements for recycled content by regulation adopted after a public hearing and at least 60 days' notice, based upon environmental benefit, cost, and market availability.
- 3) Displays the word "Recyclable" in a highly visible manner on the outside of the bag, and is labeled with the name of the manufacturer, the location (country) where the bag was manufactured, and the percentage of post-consumer recycled content in an easy-to-read size font.
- 4) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the [jurisdiction].
- f) "Reusable bag" means a bag that is provided by a store to a customer at the point of sale that is specifically designed and manufactured for multiple reuse and meets all of the requirements of Section 3.
- g) 1) "Reusable bag producer" means a person or entity that does any of the following:
- A) Manufactures reusable bags for sale or distribution to a store.
 - B) Imports reusable bags into this state, for sale or distribution to a store.
 - C) Sells or distributes reusable bags to a store.
- 2) "Reusable bag producer" does not include a store, with regard to a reusable bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).
- h) 1) "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 and that is not a recycled paper bag or a reusable bag that meets the requirements of Section 3.
- 2) A single-use carryout bag does not include either of the following:
- A) A bag to hold prescription medication dispensed from a pharmacy
 - B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or a reusable bag.
 - C) A bag provided to contain an unwrapped food item.
 - D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.
- i) "Food establishment" means [food service establishment, as defined in relevant law].
- j) "Store" means a retail establishment or food establishment located within the geographical limits of [jurisdiction]. A "retail establishment" includes any public commercial establishment engaged in the sale of personal consumer or household items to the customers who will use or consume such items.

Section 3. Reusable Bags

a) On and after [Month date, year]², a store, as defined in Section 2, may sell or distribute a reusable bag to a customer at the point of sale only if the reusable bag is made by a producer certified pursuant to this section to meet all of the following requirements:

- 1) Has a stitched handle and is designed for at least 125 uses, as provided in this section.
- 2) Has a volume capacity of at least 15 liters.
- 3) Is machine washable or made from a material capable of being washed so as to be cleaned and disinfected at least 100 times.
- 4) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:
 - A) The name of the manufacturer.
 - B) The country where the bag was manufactured.
 - C) A statement that the bag is a reusable bag and designed for at least 125 uses.
 - D) If the bag is eligible for recycling in the [jurisdiction], instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the [jurisdiction], the bag shall include the chasing arrows recycling symbol or the term “recyclable,” consistent with the Federal Trade Commission guidelines use of that term, as updated.
- 5) Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health.
- 6) Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable bag producer makes a claim that the reusable bag is recyclable.

b) In addition to the requirements in subdivision (a), a reusable bag made from plastic film shall meet all of the following requirements:

- 1) On and after [Month date, year], it shall be made from a minimum of 20 percent postconsumer recycled material.
- 2) On and after [Month date, year], it shall be made from a minimum of 40 percent postconsumer recycled material.
- 3) Meets any further standards for minimum recycled content established by regulation adopted by the Department after a public hearing and at least 60 days’ notice, based upon environmental benefit and market availability.
- 4) It shall be recyclable in this [jurisdiction], and accepted for return to at-store recycling programs.

² Operative dates for different types of stores may be staggered so that the program is phased-in over the necessary transition period, typically the first year of operation.

5) It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.

6) It shall be capable of carrying 25 pounds over a distance of 300 feet for a minimum of 125 uses and be at least 4 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13.

7) It shall be made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material.

c) In addition to the requirements of subdivision (a), a reusable bag that is not made of plastic film and that is made from any other natural or synthetic fabric, including, but not limited to, woven or nonwoven nylon, polypropylene, polyethylene-terephthalate, or Tyvek, shall satisfy all of the following:

1) It shall be sewn.

2) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses.

3) It shall have a minimum fabric weight of at least 80 grams per square meter.

Section 4. Single-Use Carryout Bags

a) On and after [Month date, year], a store, as defined in Section 2, shall not provide a single-use carryout bag to a customer at the point of sale.

b) 1) On and after [Month date, year], a store, as defined in Section 2, shall not sell or distribute a reusable bag at the point of sale except as provided in this subdivision.

2) On and after [Month date, year], a store, as defined in Section 2, may make available for purchase at the point of sale a reusable bag that meets the requirements of Section 3.

3) On and after [Month date, year], a store, as defined in Section 2, that makes reusable bags available for purchase pursuant to paragraph (2) shall not sell the reusable bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a reusable bag is not subsidized by a customer who does not require that bag.

c) 1) On and after [Month date, year], a store, as defined in Section 2, shall not sell or distribute a recycled paper bag at the point of sale except as provided in this subdivision.

2) A store, as defined in Section 2, may make available for purchase a recycled paper bag. On and after [Month date, year], the store shall not sell a recycled paper bag for less than ten cents (\$0.10) in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.

d) Exemption

1) Notwithstanding any other law, on and after [Month date, year], a store, as defined in Section 2, that makes reusable bags or recycled paper bags available for purchase at the point of sale shall provide a reusable bag or a recycled paper bag at no cost at the point of sale to a customer receiving [supplemental food assistance, WIC and other public assistance programs, as applicable in relevant state/jurisdiction].

- 2) A store shall not charge for a reusable bag that is distributed to a customer without charge during a limited duration promotional event, not to exceed 12 days per year.
- e) A store, as defined in Section 2, shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, or reusable bag as a condition of sale of any product.
- f) Any owner or operator of a Store may petition the Director of the [relevant department] for a full or partial waiver of the requirements of this Section, for a period of up to one year, if the owner or operator can:
- 1) Demonstrate that application of this Section would create undue hardship or practical difficulty for the store not generally applicable to other stores in similar circumstances, or
 - 2) Establish that the business as a whole cannot, under the terms of this Section, generate a return that is commensurate with returns on investments in other enterprises having corresponding risks and is sufficient to attract capital.
- g) All moneys collected pursuant to this section shall be retained by the store³ and may be used only for the following purposes:
- 1) Costs associated with complying with the requirements of this ordinance.
 - 2) Actual costs of providing recycled paper bags or reusable bags.
 - 3) Costs associated with a store's educational materials or educational campaign encouraging the use of reusable bags
- h) Covered stores shall separately itemize the fee charged pursuant to this Section on the standard receipt provided to customers.

SECTION 5. Outreach and Implementation

Covered stores that provide reusable or recycled paper bags at the point of sale shall display a sign in a location outside or inside of the business, viewable by customers, alerting customers of the charge per bag.

The Department's responsibilities for implementing this ordinance include conducting outreach to stores, providing multi-lingual information to educate store employees and customers, and making available lists of vendors who sell recycled paper, or reusable bags. The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations and forms to implement this ordinance.

To further promote the use of reusable shopping bags and reduce the quantity of single-use carryout bags entering the [jurisdiction]'s waste stream, the [relevant department] is authorized to make reusable carryout bags available to the public at low cost or free-of-charge, targeting such programs to reach low-income households to the greatest degree possible.

³ In some states, local governments are not permitted to collect moneys from charges on single-use carryout bags. Others choose not to collect the moneys to avoid complaints that the fee is a tax. To cover such situations for the purposes of this model, we have used language that allows stores to retain the full amount. In other states, governments collect all or a portion of the moneys generated by the charge. In these cases, the moneys are used to mitigate the impacts of disposable bags, or for other environmental programs. See "Model Fee on Disposable Bags – 10 cents" for sample language.

SECTION 6. Enforcement and Penalties

[Relevant city government department and division (ex. Police officers and Health Agents)] shall have the authority to enforce this ordinance.

[Jurisdiction name] may impose civil liability on a person or entity that knowingly violated this ordinance, or reasonably should have known that it violated this ordinance, in the amount of one thousand dollars (\$1,000) per day for the first violation of this ordinance, two thousand dollars (\$2,000) per day for the second violation, and five thousand dollars (\$5,000) per day for the third and subsequent violations.

SECTION 7. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance. Such decision shall not affect the validity of the remaining portions of this ordinance, which shall remain in full force and effect.