



DATE: December 11, 2012

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Adopt an Ordinance Adding Article IV to Chapter 16 of the Mountain View City Code Related to Reusable Bags (Second Reading)**

RECOMMENDATION

Adopt AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW ADDING ARTICLE IV TO CHAPTER 16 OF THE MOUNTAIN VIEW CITY CODE RELATED TO REUSABLE BAGS. (First reading: 5-2; Inks, Means no)

SUMMARY

On December 4, 2012, the City Council introduced an ordinance adding Article IV to Chapter 16 of the City Code relating to reusable bags (Attachment 1). This is the second reading of the ordinance. If approved, the ordinance will become effective on April 22, 2013, to coincide with Earth Day 2013 and the effective date several other jurisdictions in the region have chosen for their reusable bag ordinances.

Since the first reading of the ordinance, a minor typographical error was identified and corrected. The corrected ordinance is attached (Attachment 2)

FISCAL IMPACT

The fiscal impact to the City is minimal. There was no cost to the City for the environmental analysis services provided by San Mateo County as part of the regional effort, saving the City approximately \$40,000 to \$50,000. Costs for resident and business outreach and education efforts, and a supply of reusable bags to implement the proposed ordinance, are estimated at \$10,000 and have been included in the adopted budget for Fiscal Year 2012-13. Funding for temporary staff to assist with outreach to businesses and residents is available in the Solid Waste Program Section's annual operating budget.

ALTERNATIVE – Do not adopt the ordinance.

PUBLIC NOTICING – Agenda posting.

Prepared by:

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CP-LT-LF/7/CAM
920-12-11-12CR-E

Attachments: 1. [Council Report and Ordinance – December 4, 2012 – Item 6.1](#)
2. Corrected Ordinance

Approved by:

Michael A. Fuller
Public Works Director

Daniel H. Rich
City Manager

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
ADDING ARTICLE IV TO CHAPTER 16 OF THE MOUNTAIN VIEW CITY CODE
RELATED TO REUSABLE BAGS

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Article IV is hereby added to Chapter 16, "Reusable Bags," as follows:

**"ARTICLE IV.
REUSABLE BAGS.**

SEC. 16.80. Findings and purpose.

The city 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.

The city council of Mountain View does, accordingly, find and declare that it should restrict the use of single-use, carry-out bags.

The city has a substantial interest in protecting its residents and the environment from negative impacts from plastic carry-out bags.

SEC. 16.81. Definitions.

- a. "Customer" means any person obtaining goods from a retail establishment.

b. "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.

c. "Nonprofit charitable reuser" means a charitable organization, as defined in Sec. 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.

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

e. "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.

f. "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.

g. "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%) postconsumer 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 postconsumer recycled content.

h. "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 Mountain View. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

i. "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.

j. "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 store, 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 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.

SEC. 16.82. Single-use, carry-out bag.

a. No 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 this section.

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 (\$0.10) per bag.

c. On or after January 1, 2015, a 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 sale receipt.

e. A retail establishment may provide one (1) or more recycled paper bags at 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 Sec. 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 Sec. 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 Sec. 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

SEC. 16.83. Recordkeeping and inspection.

Every retail establishment shall keep complete and accurate 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 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 Chapter."

Section 2. Severability. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

Section 3. It is the intent of the City Council of the City of Mountain View to supplement State and Federal law and not to 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 City 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, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. CEQA Review. 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 City of Mountain View acts as a responsible agency for adoption of this ordinance within the City of Mountain View. Upon independent review of the EIR and all the evidence before it, the City 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 City of Mountain View, 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 City Council of the City of Mountain View; 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 6. Effective Date. This ordinance shall be effective on April 22, 2013.

The foregoing ordinance was regularly introduced at the Special Meeting of the City Council of the City of Mountain View, duly held on the 4th day of December, 2012, and will be given a second reading and presented for adoption at the Regular Meeting of said City Council, to be held on the 11th day of December, 2012.

(SEAL)

PUBLISHED: _____

LORRIE BREWER, MMC, CITY CLERK
CITY OF MOUNTAIN VIEW

NC/7/ORD/012-12-04-12o-E