



Council Meeting: December 6, 2011

SUBJECT: Certification of Environmental Impact Report and Adoption of Single-Use Carryout Bag Ordinance

REPORT IN BRIEF

An estimated 69 million single-use plastic carryout bags are used by Sunnyvale residents each year, part of 19 billion bags used statewide. Many bags are given to customers, at no charge, when they are purchasing groceries and other retail items. When littered or discarded, these bags have undesirable impacts on water quality, stormwater, wildlife, aesthetics, solid waste and recycling, and natural resource depletion within and beyond the city limits of Sunnyvale.

In light of these impacts, a City ban on plastic bags was first proposed as a 2009 study issue by Councilmembers Lee, Swegles and Howe. The study issue fell "below the line" for study in 2009, but above the line for 2010. On November 16, 2010, Council directed staff to draft an ordinance banning single-use plastic bags and appropriated \$100,000 from the Solid Waste and Wastewater funds to initiate Project 828980 "CEQA for Single-Use Bag Ordinance." The project's purpose was to perform the analysis necessary for compliance with the California Environmental Quality Act (CEQA).

Rincon Consultants, Inc. has prepared an Environmental Impact Report (EIR) that finds that the proposed ordinance will have no significant environmental impacts.

Attorney Steven Joseph, representing Save the Plastic Bag Coalition, has declared that he intends to sue the City unless the EIR is modified to state that greenhouse gas emissions resulting from implementation of the ordinance will have the potential to result in significant unavoidable environmental impacts.

Staff believes that Mr. Joseph's allegations are without merit and is recommending that Council (1) certify the EIR, (2) adopt the ordinance shown as Attachment 1 and (3) allow any funds remaining in Project 828980 after CEQA compliance is achieved to be used for education and outreach to assist with implementation of the ordinance.

The Sustainability Commission reviewed the proposed ordinance at its November 21, 2011 meeting. The Commission members approved of the ordinance but wished to see it cover all stores except for restaurants and eating places. The Commission's recommendation, approved on a 4-3 vote, was to expand ordinance coverage to all stores six months after the June 20, 2012 implementation date for the 99-store group. Those voting in the minority favored expanding the ordinance to all stores one year after June 20, 2012.

BACKGROUND

Californians use and discard 19 billion plastic bags per year, according to industry figures. Based on its share of statewide population, Sunnyvale's share totals 69 million plastic bags, or 497 per resident per year.

The use of single-use plastic carryout bags imposes environmental, public health, and societal burdens. Despite recycling and voluntary solutions to control pollution from plastic bags in California, relatively few plastic carryout bags are recycled and the rest either take up valuable landfill space or are discarded in the environment.

Plastic bags have historically suffered from low recycling rates. Even when properly disposed of, plastic bags are often blown from receptacles, vehicles and disposal sites and become litter. Because plastic bags are so lightweight and aerodynamic, they are quickly transported into waterways.

Plastic bags are not amenable to being recycled as part of curbside recycling programs. Their physical characteristics lead to bags clogging and jamming machinery. Bags recovered in this way are often so contaminated with moisture and non-plastic contaminants that they are not accepted by end-users who recycle plastics into new products.

Paper bags made from virgin materials are not sustainable one-for-one substitutes for plastic carryout bags because the production of virgin material bags contributes to deforestation, natural resource depletion, greenhouse gas emissions, and additional waterborne wastes.

Paper carryout bags are 100-percent recyclable and are recycled at much higher rates than plastic bags. Those that are made from post-consumer recycled fiber have fewer negative impacts than virgin fiber paper bags.

In April 2009 and again in February 2010, the Santa Clara County Recycling and Waste Reduction Commission (R&WRC) recommended that the 16 Santa Clara County jurisdictions establish a ban on plastic bags and a mandatory charge on paper bags at all retailers, excluding restaurants and fast food establishments.

A City ban on plastic bags was first proposed as a 2009 study issue by Councilmembers Lee, Swegles and Howe. The study issue fell “below the line” for study in 2009, but above the line for 2010.

On November 16, 2010, Council directed staff to prepare a Single-Use Carryout Bag ordinance that:

- bans the distribution of all single-use carryout bags
- applies the ban to:
 - Large Supermarkets and Pharmacies >10,000 square feet
 - Other Large Retailers
 - Other Food and Beverage Stores
- allows an exception to the ban if retailers package customer purchases in Green Paper Bags (bags containing at least 40% recycled paper content), so long as the retailer charges the customer a separately displayed mandatory charge of at least fifteen cents per bag, with 100% of the fee to be retained by the retailer
- takes effect on the second Wednesday of a month no less than six months following second reading of the ordinance
- Exempts from the mandatory charge customers participating in the California Special Supplemental Food Program for Women, Infants and Children (WIC) and customers participating in the Supplemental Food Program (food stamps)
- In its definitions considers the size and thickness of bags and specifies that bags provided should have toxic-free content and a preference for bags made in the US
- Considers covering all retailers

Council also approved Budget Modification No. 18, which established Special Project 828980, “CEQA for Single-Use Bag Ordinance,” in the amount of \$100,000.

More information on the single-use bag issue is found in RTC 10-313, the Study Issue report presented to Council on November 16, 2010.

EXISTING POLICY

Council Policy 3.2.4 - Zero Waste

1. Reduce the amount of Sunnyvale waste being disposed
2. Encourage residents, businesses and agencies to reuse, reduce, and recycle materials judiciously

Surface Runoff Sub-element

Policy 3.4.1 - Protect Beneficial Uses of Creeks and South San Francisco Bay

DISCUSSION

Rincon Consulting was hired to carry out the environmental review required by the California Environmental Quality Act (CEQA). Rincon prepared an Initial Study that concluded that an Environmental Impact Report (EIR) was the appropriate CEQA document. After the CEQA-required Notice of Preparation process and community meetings that allowed members of the public to suggest topics to be evaluated by the EIR, Rincon prepared a Draft EIR (DEIR) on the proposed ordinance.

CEQA requires that an EIR evaluate alternatives to the “project” (the proposed ordinance). These four EIR alternatives are not to be confused with the Council action alternatives listed later in this report (which are labeled as Alternatives I through IV to clarify the distinction).

Alternatives evaluated in the DEIR were:

- Alternative 1: No project (evaluation of the “no project” alternative is required by CEQA)
- Alternative 2: Ban on Single-Use Plastic Bags at all Retail Establishments
- Alternative 3: Mandatory Charge of \$0.25 for Paper Bags
- Alternative 4: Mandatory Charge of \$0.10 for Paper Bags

The DEIR concluded that neither the ordinance nor any of the alternatives evaluated would create a significant environmental impact.

Council can thus consider adopting an ordinance that applies to the three categories of retailers that it specified in November 2010 or one that bans single-use plastic bags at all retailers.

Council can also consider a mandatory charge of \$0.15 per paper bag, as it specified in November 2010, or any other charge amount between \$0.10 and \$0.25 per bag.

Staff recommends that Council adopt a mandatory charge of \$0.10 per bag. That is the amount required by the City of San Jose ordinance and is the amount used in a number of other ordinances around California.

The DEIR was circulated for comments in accordance with CEQA regulations. Those providing comments to the City within the official comment period were:

- City of Cupertino
- Santa Clara Valley Water District
- Save the Bay
- Save the Plastic Bag Coalition

The State Clearinghouse also wrote to report that the DEIR was submitted to appropriate state agencies for review, that the review period closed on October 7, 2011 and that no state agencies submitted responses by that date. The State Clearinghouse also acknowledged that the City has complied with State Clearinghouse review requirements for draft environmental impact documents.

Staff forwarded the comments to Rincon, which reviewed and responded to the comments in a Response to Comments documents that became Section 8.0, Responses to Comments on the Draft EIR. After considering and responding to the comments, the FEIR continues to conclude that neither the proposed ordinance nor any of the alternatives will result in a significant environmental impact.

The comment letters from Save the Plastic Bag Coalition (STBP) and Save the Bay raise issues of special interest to Council.

Save the Plastic Bag Coalition

STPB objects to the greenhouse gas threshold of significance used in the DEIR. It also claims that the proposed ordinance is preempted by state law (AB 2449). Based on these issues, STBP's letter threatens to sue the City if the proposed ordinance or a similar ordinance is adopted. Staff does not agree with the STPB allegations and believes that the EIR is valid and will withstand a legal challenge. A detailed response to the STPB comments is contained in the FEIR.

Save the Bay

Save the Bay's comments relate to policy rather than to the Draft EIR's analysis and conclusions. Save the Bay's letter encourages the City to expand the ordinance's coverage to include all retailers except restaurants. Save the Bay also raises concerns regarding the definition of "reusable bag" in the proposed ordinance. The policy issues raised by Save the Bay are discussed below.

Ordinance Coverage - In its November, 2010 direction to staff, Council specified that the ordinance should apply to three categories of retailers and added a request to consider covering all retailers. Alternative 2 of the EIR analyzes the environmental impacts of covering all retail establishments (including restaurants) and finds that, like the project and all of the alternatives analyzed, that there would be no significant impact.

In the November 2010 RTC, staff estimated that 99 stores fell into one or more of the three recommended categories. As businesses open and close, this number and the number of business license holders varies, and the total number of examples named on Attachment B is 89. But because the EIR refers to the original calculation, this RTC will use "99 stores" to refer to the group of stores included in the three categories.

Staff believes that application of the ordinance to the 99-store group is a practical, “80/20 Rule” approach to achieving a significant reduction in single-use bag distribution in Sunnyvale. That is, it targets the stores most likely to give out the vast majority of single-use bags.

However, if Council wished to do so, expanding the ordinance to cover all retailers except restaurants could be accomplished by deleting the words “of at least 10,000 square feet of retail space” from the Section 5.38.010.J(2) definition of “store” and specifying that restaurants were excluded. Doing so would further decrease single-use bag distribution and would not result in any significant environmental impacts, based on the EIR’s analysis of Alternative 2.

Analysis of the City’s business license data shows 10,895 active business licenses as of October 28, 2011. Of the total, 1,164 business license holders might be included if the ordinance applied to all retailers. This includes businesses categorized as:

Auto Dealer	Liquor store
Apparel and accessories	Gas station
Department store	Car wash
Computer sales and service	Antiques
Eating place	Art dealers, sales, gallery
Food store	Alcoholic beverage
General merchandise	Pharmacy
Video rentals	Machine shop
General retailer	Jewelry
Pawn shop	Arts and crafts retail
Printing and publishing	Cellular phone retail
Auto repair and parts	Second hand dealer
Wholesale and distributor	

Not all businesses in each of the above categories would necessarily be considered a “store” for purposes of the ordinance and thus subject to its requirements. But each category is believed to include at least some businesses that would be a “store.” For example, new car dealers include parts departments that sell parts and accessories, many video rental stores sell videos and snacks, a car wash may include a snack/gift shop, some wholesalers also operate retail outlets, and so on.

If the 313 “Eating places” (i.e., restaurants) are excluded from the total, then 851 businesses would be “stores” covered by the proposed ordinance. In some instances, a business may be both a store and a restaurant. Staff recommends that these cases be considered stores for purposes of the ordinance.

Expanding the ordinance to cover all stores would raise issues including:

- Smaller retailers have not been individually targeted for outreach and may not be familiar with the proposed ordinance and the reasons for it
- Potential ambiguities regarding the application of the ordinance definition of “store” to unique and presently unanticipated circumstances, including home and mail order/Internet businesses
- Increased outreach, education and enforcement costs

Staff continues to recommend that the ordinance apply to the three store categories specified by Council in its November 2010 action. Doing so would eliminate the majority of single-use plastic bags with less work and confusion than a ban that applied to all retailers. Because the EIR evaluates the impacts of the “all retailers” alternative, Council would always have the option of broadening the ordinance coverage at a later date if it found the proposed coverage unsatisfactory.

Staff anticipates that application of the ordinance to the 99-store group will result in broad public acceptance of the minor behavioral changes needed to switch to reusable bags. Such a demonstration of the success of the ordinance would allow and support expansion of coverage to more “stores” at a future date.

Definition of Reusable Bag - Save the Bay suggests that the ordinance only allow free distribution of reusable bags only during limited-store promotions. This concern arises from observations that some San Francisco stores began bagging customer purchases in inexpensive plastic bags that met that city’s thickness requirement for a reusable bag.

The San Francisco ordinance defines a reusable bag as “a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other machine washable fabric, and/or (2) made of durable plastic that is at least 2.25 mils thick.”

The proposed Sunnyvale ordinance definition of “Reusable bag” goes beyond San Francisco’s to include detailed performance requirements (minimum lifetime of 125 uses, capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet, minimum volume of 15 liters). Staff believes this definition is rigorous enough to discourage the type of undesirable behavior experienced in San Francisco.

Implementation of the proposed ordinance on June 20, 2012, as shown in the proposed ordinance, will provide a transition period that will allow stores to:

- use up already-purchased stocks of bags soon to be banned
- source and purchase “Green” paper bags
- learn about ordinance requirements and train employees
- reprogram cash registers and put new accounting line items and reporting procedures into place

During the transition period City staff will, to the extent resources allow, provide retailers and the public with information on the changes introduced by the ordinance and the reasons for those changes and work with stores to distribute reusable bags and promote their use.

FISCAL IMPACT

Banning single-use bags will provide fiscal benefits to the City in the areas of litter cleanup and solid waste management that will be too small to measure accurately in the short term. These impacts will include:

- Reduced litter cleanup in street medians, parks and other City property and waterways (or more thorough cleanup of non-bag litter).
- Reduced collection and disposal of garbage
- Reduced downtime and maintenance effort at the SMaRT Station

The City’s Stormwater Permit requires that permittees implement “best management practices” control measures for litter and trash such as trash reduction ordinances (e.g., bans on single use bags and single use plastic foam food containers). Implementation of such ordinances will be part of the City’s Short and Long Term Trash Load Reduction Plans. These plans will be submitted to the Regional Water Quality Control Board to demonstrate the City’s compliance with the Municipal Regional Stormwater NPDES* Permit trash load reduction requirements for municipal separate storm sewer collection systems. To the extent that the proposed single-use bag ordinance assists with permit compliance, it will help the City avoid implementing other, more costly compliance measures.

* National Pollutant Discharge Elimination System

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Special outreach was conducted as part of the EIR scoping process.

Three public meetings were conducted in June 2011 to solicit input on issues that should be examined by the DEIR. A print advertisement, web site information, a press release and notices to interested persons were used to promote these meetings. Those receiving the notices by either email or USPS mail included:

- *Sunnyvale Chamber of Commerce*
- *Sunnyvale Downtown Association*
- *All retailers listed in Attachment 2*
- *American Chemistry Council*
- *California Grocers Association*
- *California Restaurant Association*
- *Sunnyvale Neighborhood Associations*
- *Sunnyvale Cool Cities*
- *Santa Clara Valley Urban Runoff Pollution Prevention Program*
- *Sierra Club*
- *Save the Bay*
- *Californians Against Waste*
- *Sunnyvale Commercial Recycling business email list (approximately 200 businesses)*
- *Bay Counties Waste Services*

The Sustainability Commission reviewed the proposed ordinance at its November 21, 2011 meeting. The Commission members approved of the ordinance but wished to see it cover all stores except for restaurants and eating places. The main point of discussion was whether coverage for the additional stores beyond the 99-store group recommended by staff should begin on June 20, 2012 or if coverage for the additional stores should be phased in at a later date.

The Commission's recommendation, approved on a 4-3 vote, was to expand ordinance coverage to all stores six months after the June 20, 2012 implementation date for the 99-store group. Those voting in the minority favored expanding the ordinance to all stores one year after June 20, 2012.

ALTERNATIVES

Alternative I.

Certify the EIR by approving the attached resolution (Attachment C) and approve the first reading of the ordinance (Attachment A)

Alternative II.

Certify the EIR by approving the attached resolution (Attachment C), then alter and approve the first reading of the ordinance (Attachment A) with alterations consistent with one or more of the alternatives evaluated by the EIR (e.g. mandatory charge amounts between 10 cents and 25 cents per paper bag, application to additional retailers)

Alternative III.

Modify the description of Project 828980 "CEQA for Single-Use Bag Ordinance" to allow any funds remaining in the project to be used for education and outreach to assist with implementation of the ordinance.

Alternative IV.

Take no action

RECOMMENDATION

Staff recommends that Council:

- Approve Alternative II by approving the attached resolution (Attachment C) and approving the first reading of the ordinance (Attachment A) with the amount of the mandatory charge set at 10 cents per paper bag
- Approve Alternative III to modify the description of Project 828980 “CEQA for Single-Use Bag Ordinance” to allow any funds remaining in the project to be used for education and outreach to assist with implementation of the ordinance

Setting the mandatory charge amount at 10 cents will make it consistent with many ordinances in the Bay Area, including nearby San Jose’s, which will minimize confusion for retailers and their customers. Providing resources for staff to educate the community about the ordinance will make for smoother implementation and enhance acceptance of the changes made by the ordinance.

Reviewed by:

John Stufflebean, Director, Environmental Services Department
Prepared by: Mark Bowers, Solid Waste Programs Division Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Proposed Ordinance
- B. Examples of Store Categories
- C. Resolution Approving and Certifying the Final Environmental Impact Report on the Sunnyvale Plastic Carryout Bag Ordinance

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 5.38 (PLASTIC CARRYOUT BAGS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO SINGLE-USE CARRYOUT BAGS

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.38 ADDED. Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) is hereby added to the Sunnyvale Municipal Code as follows:

Chapter 5.38

PLASTIC CARRYOUT BAGS

5.38.010 Definitions.

5.38.020 Plastic carryout bags prohibited.

5.38.030 Permitted bags.

5.38.040 Regulation of recyclable paper carryout bags.

5.38.050 Use of reusable bags.

5.38.060 Exempt customers.

5.38.070 Operative date.

5.38.080 Enforcement and violation--penalty.

5.38.090 Severability.

5.38.100 No conflict with federal or state law.

5.38.010 Definitions.

The following definitions apply to this Chapter:

- A. “Customer” means any person purchasing goods from a store.
- B. “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.
- C. “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- 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, produce 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. “Produce bag” or “product bag” means any bag without handles provided to a customer (1) to carry produce, meats, or other food items to the point of sale inside a store; (2) to hold prescription medication dispensed from a pharmacy; (3) to protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a reusable bag or recyclable paper carryout bag; or (4) a bag without handles that is designed to be placed over articles of clothing on a hanger.

G. “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.

H. “Recyclable paper carryout bag” means a paper bag that meets all of the following requirements: (1) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (2) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (3) is accepted for recycling in curbside programs in the City; (4) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of postconsumer recycled material used; and (5) displays the word “Recyclable” in a highly visible manner on the outside of the bag.

I. “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.

J. “Store” means any of the following retail establishments located within the City limits of the City of Sunnyvale:

(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 sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and 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); 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.

5.38.020 Plastic carryout bags prohibited.

- A. No 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 produce bags or product bags.

5.38.030 Permitted bags.

All stores 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.

5.38.040 Regulation of recyclable paper carryout bags.

- A. Any store that provides a recyclable paper carryout bag to a customer must charge the customer 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.
- B. No store shall rebate or otherwise reimburse a customer any portion of the 10-cent (\$0.10) charge required in Subsection A, except as otherwise provided in this Chapter.
- C. All stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.
- D. All stores must report to the Director of Environmental Services, on a quarterly basis, the total number of recyclable paper carryout bags provided, the total amount of monies collected for providing recyclable paper carryout bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers in the prior quarter. Such reporting must be done on a form prescribed by the Director of Environmental Services, and must be signed by a responsible agent or officer of the store confirming that the information provided on the form is accurate and complete. For the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, all quarterly reporting must be submitted no later than 30 days after the end of each quarter.
- E. If the reporting required in Subsection E is not timely submitted by a store, such store shall be subject to the fines set forth in Section 5.38.080.

5.38.050 Use of reusable bags.

Stores are strongly encouraged to educate their staff to promote reusable bags and to post signs encouraging customers to use reusable bags.

5.38.060 Exempt customers.

All stores must 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.

5.38.070 Operative date.

This Chapter shall become operative on June 20, 2012.

5.38.080 Enforcement and violation--penalty.

A. The Director of Environmental Services has primary responsibility for enforcement of this Chapter. The Director of Environmental Services 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 store during business hours.

B. If the Director of Environmental Services determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a store that a violation has occurred and the potential penalties that will apply for future violations.

C. Any store 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 store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the following penalties will be imposed and shall be payable by the operator of the store:

(1) A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written warning notice is given;

(2) A fine not exceeding two hundred dollars (\$200.00) for the second violation after the written warning notice is given; or

(3) A fine not exceeding five hundred dollars (\$500.00) for the third and any subsequent violations after the written warning notice is given.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

F. All fines collected pursuant to this Chapter shall be deposited in the Solid Waste Management Fund of the Department of Environmental Services to assist the department with its costs of implementing and enforcing the requirements of this Chapter.

G. Any store operator who receives a written warning notice or fine may request an administrative review of the accuracy of the determination or the propriety of any fine issued, by filing a written notice of appeal with the Director of Environmental Services no later than 30 days after receipt of a written warning notice or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal. The appeal will be heard by a hearing officer designated by the Director of Environmental Services. The hearing officer will conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the

City, and will give the appellant 10 days prior written notice of the date of the hearing. The hearing officer may sustain, rescind, or modify the written warning notice or fine, as applicable, by written decision. The hearing officer will have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the hearing officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

5.38.090 Severability.

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.

5.38.100 No conflict with federal or state law.

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

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 3. CEQA-COMPLIANCE. The City Council hereby determines that the Environmental Impact Report prepared for this ordinance have been completed in compliance with the requirements of the California Environmental Quality Act (CEQA) and reflects the independent judgment of the City, and finds that adoption of the ordinance will have no significant negative impact on the area's resources, cumulative or otherwise. The Director of Community Development may file a Notice of Determination with the County Clerk pursuant to CEQA guidelines.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2011, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

Examples of Store CategoriesLarge Supermarkets and Pharmacies >10,000 square feet

Safeway (4)	Sprouts
Lucky	Smart & Final
CVS (3)	Costco (does not provide bags)
Walgreens (3)	Trader Joes
Rite Aid	Super Sunnyvale
Target	New Wing Yuan Market
Hankook Supermarket	Bharat Bazar
Fresh and Easy	

Other Large Retailers (>10,000 square feet used for retail sales)

Best Buy	Macy's
Fry's Electronics	Orchard Supply Hardware
Home Depot	Sports Authority
Lowe's	Sports Basement
Big Five Sporting Goods	PetSmart
Michael's Arts & Crafts	Ross Dress for Less
Office Depot	Summerwinds Nursery
Petco	

Food and Beverage Stores

Arco AM-PM	Save a Lot Liquors
Chavez Supermarket	Guadalajara Market
Coconut Hill Indian Grocery	Al's Liquors
Coles Market	Liquor and Food Mart
Country Farm Produce	Sun Liquors
Felipe's Market	Fremont Gas & Mini Market
New Wing Yuan Market	Convenience Store
Gala Mart	Fair Oaks Chevron
Grewalz Liquor & Groceries (2)	Fiesta Liquors
Grewalz Market	Lake Vista Liquors
Henderson Market	Mary Market & Liquor
India Cash & Carry	Prestige Wines & Liquors
Karoon International Food Market	Goruba Fair Oaks 76
Kumud Groceries	All Star Liquor
Madras Groceries	Liquor and Food Mart
New Bangla Bazaar	Liquor Tobacco & More
New India Bazar (2)	Hoppy's Food Mart
New India Market	Brandon Wines
Namaste Plaza	Cig Xpress & Liquor 2
Quick Stop Market	Wolfe Liquors
Quincy Liquor & Grocery	Shirin Market
Save & Go Market	L&K Liquors
7-Eleven (7)	Chevron (Mary/El Camino)
Super Quick Mart	Union 76 (Bernardo/El Camino)
Western Pacific Oriental Grocery	BevMo
Wolfe India Bazaar	Voyager Liquors

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE MAKING FINDINGS NECESSARY TO
APPROVE THE SINGLE-USE CARRYOUT BAG
ORDINANCE**

WHEREAS, an Environmental Impact Report has been prepared which analyzes the environmental effects of the Sunnyvale Single-Use Carryout Bag Ordinance in the City of Sunnyvale; and

WHEREAS, on December 6, 2011, the City Council, as Lead City Agency, reviewed the Final Environmental Impact Report; and

WHEREAS, on that date, the City Council certified that the Final Environmental Impact Report was prepared in full compliance with State and City CEQA Guidelines,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Consistent with Section 15128 of the State CEQA Guidelines, the Initial Study/Notice of Preparation, incorporated herein by reference, determined that the following environmental impacts were not considered potentially significant and were not addressed further in the Final Environmental Impact Report ("Final EIR"): Aesthetics, Agricultural Resources, Cultural Resources, Geology/Soil, Hazards and Hazardous Materials, Land Use/Planning, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, and Transportation/Traffic.

SECTION 2. Consistent with Sections 15091 and 15092 of the State of California CEQA Guidelines, the City Council finds that none of the impacts resulting from the project would result in a significant effect. More specifically, as detailed in the Final EIR at Sections 4.0-5.0, incorporated herein by reference, the Sunnyvale Single-Use Carryout Bag Ordinance would have less than significant impacts with respect to Air Quality (Section 4.1), Biological Resources (Section 4.2), Greenhouse Gas Emissions (Section 4.3), Hydrology/Water Quality (Section 4.4), Utilities and Service Systems (Section 4.5), and Long term impacts (Section 5.0).

SECTION 3. The City Council is not required to make findings rejecting the alternatives described in the Final EIR since all of the project's significant impacts will be less than significant. However, the City Council does conclude that one of the project alternatives, the Mandatory Charge of \$0.25 for Paper Bags alternative would be considered environmentally superior among the alternatives, as it would have more environmental benefits compared to the proposed Ordinance. In addition, this alternative would result in beneficial effects to the environment compared to existing conditions in the areas of air quality, biological resources, greenhouse gas emissions, and hydrology/water quality. This alternative would also meet the project objectives, including:

- Reducing the number of single-use plastic bags distributed by retailers and used by customers in Sunnyvale
- Deterring the use of paper bags by customers in Sunnyvale

- Promoting a shift toward the use of reusable carryout bags by retail customers in Sunnyvale
- Reducing the environmental impacts related to single-use plastic carryout bags, such as impacts to biological resources (including marine environments), water quality and utilities (solid waste)
- Avoiding litter and the associated adverse impacts to stormwater systems, aesthetics and the marine environment (San Francisco Bay)

SECTION 4. Consistent with Section 21081.6(d) of the California Environmental Quality Act, the documents which constitute the record of proceedings for approving this project are located at Sunnyvale City Hall, 456 W. Olive Avenue, Sunnyvale, California. The custodian of these documents is Mark Bowers, Solid Waste Programs Division Manager, Environmental Services Department.

SECTION 5. Consistent with Public Resources Code Section 21081.6, the City Council does not need to adopt a Mitigation Monitoring Program, because the Single-Use Carryout Bag Ordinance would not result in any significant effects on the environment, as detailed in Section 2 of this Resolution.

SECTION 6. The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect.

Adopted by the City Council at a regular meeting held _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney