

Sunnyvale Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[No Frames](#)[Title 5. BUSINESS LICENSES AND REGULATIONS](#)**Chapter 5.38. PLASTIC CARRYOUT BAGS**

5.38.010. Definitions.

The following definitions apply to this chapter:

- (1) “Customer” means any person purchasing goods from a store.
- (2) “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.
- (3) “Person” means any natural person, firm, corporation, partnership, or other organization or group however organized.
- (4) “Permitted carryout bag” means a recyclable paper carryout bag or a reusable bag.
- (5) “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.
- (6) “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.
- (7) “Produce bag” or “product bag” means any bag without handles provided to a customer: (A) to carry produce, meats, or other food items to the point of sale inside a store; (B) to hold prescription medication dispensed from a pharmacy; (C) 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 (D) a bag without handles that is designed to be placed over articles of clothing on a hanger.
- (8) “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.
- (9) “Recyclable paper carryout bag” means a paper bag that meets all of the following requirements: (A) is one hundred percent recyclable overall and contains a minimum of forty percent post-consumer recycled material; (B) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (C) is accepted for recycling in curbside programs in the city; (D) 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 (E) displays the word “Recyclable” in a highly visible manner on the outside of the bag.
- (10) “Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (A) meets the EcoLogo ATP-001 standard for durability Dynamic Test with a minimum of 1500 cycles of testing; (B) meets the EcoLogo ATP-001 standard for durability Capacity Test with a minimum volume of 15 liters; (C) is machine washable or is made from a material that can be cleaned or disinfected; (D) does not contain lead, cadmium, or any other heavy metal in toxic amounts as determined by testing using State methods following the Model Toxics in Packaging Legislation; (E) 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 (F) if made of plastic, is a minimum of at least 2.25 mils thick as measured according to ASTM D6988-08 or ISO 4593-1993 or ISO 4591:1992 standards.

The Director of Environmental Services or his or her designee is authorized to approve alternate testing methods meeting this section's requirements provided that the proposed testing standards satisfactorily comply with the intent, quality and effectiveness in order to meet the purposes of this chapter.

(11) "Store" means any of the following retail establishments located within the City limits of the city of Sunnyvale:

(A) 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;

(B) 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](#));

(C) 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; or

(D) A store or other location of less than 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](#)), including temporary events and mobile vendors operating without a fixed place of business. (Ord. 3001-13 § 1; Ord. 2965-11 § 1).

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. (Ord. 2965-11 § 1).

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. (Ord. 2965-11 § 1).

5.38.040 Regulation of permitted carryout bags.

(a) (1) Any store that provides a permitted carryout bag to a customer must charge the customer a minimum of 10 cents (\$0.10) for each bag provided, except as otherwise provided in this chapter.

(2) The minimum charge for permitted carryout bags set forth in paragraph (1) of this subsection (a) shall be adjusted as of July 1, 2014 and annually on July 1 thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) (CPI-U), or successor index compiled and published by the United States Department of Labor, Bureau of Labor Statistics. The index level as of December 2012 (i.e. 239.533) shall be the base index and shall be compared with the index in

subsequent years. The minimum charge will be adjusted only when the percentage change from the base index would result in a difference of at least \$0.05 in the minimum charge. In no event shall the adjustment exceed \$0.05 per year.

(b) No store shall rebate or otherwise reimburse a customer any portion of the charge required in subsection (a) of this section, 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 retain a complete and accurate record or documents showing the total number of recyclable paper carryout bags provided, the total number of reusable bags provided and the total amount of monies collected for providing recyclable paper carryout bags and reusable bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers. Records will include permitted carryout bags provided free of charge per the exemptions in Section [5.38.060](#). Such information must be retained for a minimum period of three years from the date of purchase and made available upon request at no cost to the Director of Environmental Services.

(e) If the reporting required in subsection (d) of this section is not timely submitted by a store, such store shall be subject to the fines set forth in Section [5.38.080](#). (Ord. 3001-13 § 2; Ord. 2965-11 § 1).

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. (Ord. 2965-11 § 1).

5.38.060. Exemptions.

(a) All stores must provide at the point of sale, free of charge, permitted carryout bags to any customer participating 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](#), or in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California [Welfare and Institutions Code](#).

(b) This chapter shall not apply to 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. (Ord. 3001-13 § 3; Ord. 2965-11 § 1).

5.38.070. Operative date.

(a) Stores defined in subsections (11)(A), (B), and (C) of Section [5.38.010](#) shall become subject to this chapter on June 20, 2012.

(b) Stores defined in subsection (11)(D) of Section [5.38.010](#) shall become subject to this chapter on March 20, 2013. (Ord. 2965-11 § 1).

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 or 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 for the first violation after the written warning notice is given;
- (2) A fine not exceeding two hundred dollars for the second violation after the written warning notice is given; or
- (3) A fine not exceeding five hundred dollars 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 thirty 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 forty-five 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 ten 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. (Ord. 2965-11 § 1).

5.38.090. Severability.

If any section, subsection, sentence, clause, or phrase of this chapter 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 this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid. (Ord. 2965-11 § 1).

5.38.100. No conflict with federal or state law.

Nothing in this chapter is intended to create any requirement, power or duty that is in conflict with any federal or state law. (Ord. 2965-11 § 1).

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