



**Draft for Sustainability Commission review
on July 15, 2013**

Council Date: August 13, 2013

**SUBJECT: Discussion and Possible Action to Introduce an Ordinance
Updating the Regulations for Single-Use Carryout Bags**

BACKGROUND

On December 13, 2011, Council adopted the single-use carryout bag ordinance now codified as Chapter 5.38 of the Municipal Code.

In the discussion that preceded adoption, Council expressed interest in making key ordinance provisions consistent with similar provisions in nearby cities for the benefit of shoppers and store owners and managers. For example, Council changed the mandatory charge for recyclable paper bags to ten cents to mirror the charge in San Jose, including a feature in both ordinances that increases the charge to 25 cents on January 1, 2014.

With a year of experience with the practical application of the ordinance, staff has also identified a number of other minor changes that, if implemented, would make the ordinance more effective.

EXISTING POLICY

Goal EM-8: Protection of Creeks and Bay

Assure the reasonable protection of beneficial uses of creeks and San Francisco Bay, established in the Regional Board's Basin Plan, and protect environmentally sensitive areas.

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

DISCUSSION

As with the San Jose and Sunnyvale ordinances, bag ordinances adopted more recently in Mountain View, Cupertino, Los Altos, Palo Alto, and nearly all San Mateo County jurisdictions also set the charge for a paper bag at ten cents. Most of these ordinances also require a ten-cent charge for a plastic "reusable bag," as that term is defined in the ordinance. The purpose of the mandatory charges is to provide an incentive to shoppers to bring their own bags when

shopping or in some way carry purchases away from stores without using a single-use bag.

City of San Jose released a report on December 3, 2012 on a study that described changes after that city's ordinance went into effect on January 1, 2012. Among other things, the report found (based on pre- and post-ban observations of shoppers leaving stores) that the ban on single-use plastic, combined with the ten-cent charge for paper bags, had resulted in a 90% decrease in use of single-use bags when all types are combined. That is, the average number of single-use bags used per customer had decreased from 3.0 bags to 0.3 bags per visit following the implementation of the ordinance.

City of San Jose believes that the current charge of ten cents for a recyclable paper bag is producing sufficient shopper incentive to minimize the use of paper bags. San Jose is preparing to amend its ordinance to eliminate the increase to 25 cents per paper bag that would otherwise happen on January 1, 2014. The San Jose report is consistent with observations by Sunnyvale staff, who agree that ten cents is an appropriate incentive at this time. Staff recommends that the Sunnyvale fee not increase to 25 cents on January 1, 2014.

However, future inflation could reduce the impact of a ten-cent charge over time, so staff is recommending that the increase to 25 cents be replaced with a CPI-driven adjustment that would increase the charge in five cent increments as indicated by increases in the CPI. In this fashion, the amount of the charge would stay even with inflation without the need to amend the ordinance. The first five-cent increase in the charge would occur in about 10 years, based on staff analysis of inflation data from the past 30 years.

The proposed ordinance changes and *reasons* for each are as follows:

5.38.010.I

- Revise the definition of "Reusable bag" to match available testing protocols. *Provides clarity to stores and bag vendors on which bags qualify as "reusable." Matches requirements in Palo Alto ordinance.*

5.38.010.J(4)

- Include "vendor" in the definition of "store." *Makes it clear that the ordinance applies to temporary sales locations, such as at fairs, community events, etc.*

5.38.040.A(1)

- Require stores to charge ten cents for reusable bags provided at point of sale (as opposed to a store selling a reusable bag to a customer). *A few stores have begun providing certain plastic carryout bags to customers at*

no charge, calling them “reusable bags,” although these bags are not often actually reused. It can be difficult to define “reusable bag” and to communicate that definition clearly to both stores and shoppers. The ordinances in Mountain View, Los Altos, and San Mateo County require the mandatory ten-cent charge on both paper and “reusable” plastic bags to address this issue. Staff believes this is a good approach and recommends doing the same.

5.38.040.A(2)

- Delete the increase to 25 cents per paper bag that will otherwise take effect January 1, 2014, consistent with City of San Jose’s plans, as discussed above.
- Adjust the initial ten-cent charge for “permitted bags” (paper bags and reusable plastic bags) by CPI change (SF/Oak/SJ All Urban Consumers), in five cent increments. The base month for CPI adjustment would be December 2011.

5.38.040.D

- Drop the requirement that stores report quarterly to the City the number of paper bags distributed, monies collected for those bags, and actions taken to promote reusable bag use.

Replace it with a requirement that stores keep records on the numbers of paper and reusable bags provided and the monies collected for each, plus the number of bags given away with no charge under the exemption for WIC and food stamp recipients. Records would be maintained for 3 years from the date of purchase and provided to the City upon request. *Despite vigorous efforts by staff, many stores have not provided these reports and there is limited value in the information that is being reported. Dropping the reporting requirement would allow both City staff and store employees to use their time more productively. Staff could still request and examine store records if the City receives a complaint or if there are other indications of a problem. The proposed records (but not reports) on the numbers of reusable bags and bags given to exempt recipients would add significantly to staff’s ability to confirm store compliance.*

5.38.060.A

Update and correct code references and terms used to describe the exemption for recipients of food stamps.

The amendment is consistent with the EIR adopted when the ordinance was adopted and no further environmental review is required.

FISCAL IMPACT

Adopting the ordinance will have no fiscal impact.

PUBLIC CONTACT

Public Contact was made through posting of the Sustainability Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk.

ALTERNATIVES

- 1) Approve the first reading of the ordinance (Attachment A) amending Chapter 5.38 of the Municipal Code.

- 2) Take no action and allow the fee for recyclable paper bags to increase to 25 cents in January 2014.

RECOMMENDATION

Staff recommends that Council approve Alternative 1: Introduce the ordinance (Attachment A) amending Chapter 5.38 of the Municipal Code.

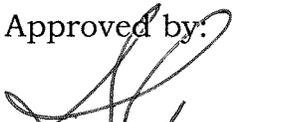
Reviewed by:



for John Stufflebean, Director, Environmental Services

Prepared by: Mark Bowers, Solid Waste Programs Division Manager

Approved by:



Gary M. Duebbers
City Manager

Attachments

- A) Ordinance Amending Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code Related to Single-Use Carryout Bags

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING 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. SECTION 5.38.010 AMENDED. Section 5.38.040 of Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is hereby amended as follows:

5.38.010 Definitions.

The following definitions apply to this Chapter:

(1) – (2) [Text Unchanged]

(4) “Permitted carryout bag” means a recyclable paper carryout bag or a reusable bag.

(4) – (8) [Text unchanged; renumber consecutively (4) – (9)]

~~(9)~~(10) “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 meets the EcoLogo ATP-001 standard for durability Dynamic Test with a minimum of 1500 cycles of testing; (2) meets the EcoLogo ATP-001 standard for durability Capacity Test with 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 as determined by testing using State methods following the Model Toxics in Packaging Legislation; (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; 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.

~~(10)~~(11) “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);

(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; or

(4) 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.

SECTION 2. SECTION 5.38.040 AMENDED. Section 5.38.040 of Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is hereby amended as follows:

5.38.040 Regulation of ~~recyclable paper~~permitted carryout bags.

(a) (1) Any store that provides a ~~recyclable paper~~permitted carryout bag to a customer ~~on or before January 1, 2014,~~ must charge the customer a minimum of 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.

~~(2) Any store that provides a recyclable paper carryout bag to a customer after January 1, 2014, must charge the customer 25 cents (\$0.25) for each bag provided, except as otherwise provided in this Chapter.~~

(2) The minimum charge for permitted carryout bags set forth in 5.38.040.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, 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, 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 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. Records will include permitted carryout bags provided free of charge per the exemptions in 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 E(d) is not timely submitted by a store, such store shall be subject to the fines set forth in Section 5.38.080.

SECTION 3. SECTION 5.38.060 AMENDED. Section 5.38.060 of Chapter 5.38 (Plastic Carryout Bags) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is hereby amended as follows:

5.38.060 Exemptions.

——(a) All stores must provide at the point of sale, free of charge, ~~either reusable bags or recyclable paper~~permitted 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.~~, 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.

SECTION 4. 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 5. CEQA-COMPLIANCE. As part of the process of adopting the single use carryout bag ordinance, the City has analyzed the environmental effects of this ordinance, certified a program Environmental Impact Report on December 13, 2011, and made necessary findings required by the California Environmental Quality Act (Public Resources Code §§ 21000

et. seq.; “CEQA”). The City finds that adoption of this ordinance is within the scope of the program EIR and no new environmental documentation is required.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. 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 _____, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL

APPROVED AS TO FORM:

City Attorney