

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: Struck Out**

**NEW LANGUAGE: Double Underline**

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 8, SECTIONS 66.0801, 66.0802, 66.0803, 66.0804, 66.0805, 66.0806, 66.0807, 66.0808, 66.0809, AND 66.0810 RELATING TO REDUCING THE USE OF PLASTIC AND PAPER SINGLE-USE CARRYOUT BAGS AND PROMOTING THE USE OF RECYCLABLE AND REUSABLE CARRYOUT BAGS.

**Division 8: Single-Use Carryout Bag Reduction**

**§66.0801**      **Purpose and Intent**

The purpose of this Division is to regulate the use of *plastic single-use carryout bags* and *paper single-use carryout bags* and promote the use of *reusable bags* and *recyclable* bags within the *City*. These regulations are intended to protect the public health, safety, and welfare of the citizens of San Diego and to protect the environment by reducing *plastic single-use carryout bags* and *paper single-use carryout bags* that would otherwise fill our landfill, litter the *City's* landscape and waterways, and endanger the health of humans, fish, and wildlife.

**§66.0802**      **Definitions**

All defined terms in this Division appear in italics. For purposes of this Division, the following definitions apply:

City has the same meaning as in San Diego Municipal Code section 66.0102.

Customer means any *person* purchasing goods from a *store*.

Department means the City of San Diego Environmental Services Department or its successor.

Director has the same meaning as in San Diego Municipal Code section 66.0102.

Disposal has the same meaning as in San Diego Municipal Code section 66.0102.

Paper single-use carryout bag means any bag made of paper materials that is provided to a *customer* at the point of sale. Paper materials include virgin, recycled, or *recyclable* paper material. The term *paper single-use carryout bag* does not include *reusable bags* or *product bags*.

Person has the same meaning as in San Diego Municipal Code section 66.0102.

Plastic single-use carryout bag means any bag made of plastic derived from petroleum, natural gas, or a biologically-based source such as corn or other plant sources, which is provided to a *customer* at the point of sale. The term *plastic single-use carryout bag* includes compostable and biodegradable bags, but does not include *reusable bags* or *product bags*.

Post-consumer recycled material means a *recyclable* material that would otherwise be destined for *disposal*, having completed its intended end use and product life cycle. The term *post-consumer recycled material* does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

Product bag means any bag without handles provided to a *customer* to:

- (a) carry produce, meats, or other food items (including bulk food) to the point of sale inside a store;
- (b) hold prescription medication dispensed from a pharmacy;
- (c) protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a reusable bag or a recyclable paper single-use carry out bag; or
- (d) be placed over articles of clothing on a hanger by design.

Recyclable has the same meaning as in San Diego Municipal Code section 66.0102.

Recyclable paper single-use carryout bag means a bag that:

- (a) is one hundred percent (100%) recyclable and contains a minimum of forty percent (40%) post-consumer recycled material; and
- (b) has the following information printed on the bag:
  - (1) name of the bag manufacturer;
  - (2) the country of bag manufacture; and
  - (3) the percentage of post-consumer recycled material used to make the bag.

Recycling has the same meaning as in San Diego Municipal Code section 66.0102.

Responsible person means any owner or operator of a store, including a natural person, firm, association, organization, partnership, corporation, business trust, or joint venture.

Reusable bag means a bag with handles that is specifically designed and

manufactured for multiple reuse and meets all of the following requirements:

- (a) has a minimum useful life of 125 uses which, for purposes of this Division, means the capacity to carry at least 22 pounds over a distance of at least 175 feet at least 125 times;
- (b) has a minimum volume of 15 liters;
- (c) is machine washable or is made of a material that can be cleaned or disinfected with commonly available household cleaners;
- (d) does not contain lead in an amount greater than 89 parts per million (ppm) or contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case the lower limits shall apply;
- (e) if made predominantly of plastic derived from petroleum, natural gas, or a biologically-based source, such as corn or other plant sources, is at least 2.25 mils thick;
- (f) if made predominantly of plastic derived from petroleum or natural gas, is made from at least twenty percent (20%) *post-consumer recycled material*; and
- (g) has the following information printed on the bag or printed on a tag permanently affixed to the bag:

  - (1) the name of the bag manufacturer;
  - (2) the country of bag manufacture;
  - (3) a statement that the bag does not contain lead or total heavy

metals in amounts greater than those set forth above in this definition:

- (4) the percentage of *post-consumer recycled material*, if any, used to make the bag; and
- (5) the bag care and washing instructions.

Store means any of the following retail establishments located within the City:

- (a) a full-line, self-service retail establishment with gross annual sales of two million dollars (\$2,000,000.00) or more that offers for sale perishable items in addition to a line of dry groceries, canned goods, or non-food items (Category A store);
- (b) a retail establishment, having at least 10,000 square feet of retail space, that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code sections 7200, et seq., as may be amended) and that has a pharmacy licensed pursuant to the Pharmacy Law (California Business and Professions Code sections 4000, et seq., as may be amended) (Category B store); or
- (c) a drug store, pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of goods that includes milk, bread, soda, and snack foods, including those retail establishments with a Type 20 or 21 license issued by the California Department of Alcoholic Beverage Control (Category C store).

**§66.0803**      **Prohibited Carryout Bags**

- (a)    No store shall provide to any customer a plastic single-use carryout bag for the purpose of carrying away goods or other materials from the point of sale, except as otherwise provided in this Division.
- (b)    No store shall provide to any customer a paper single-use carryout bag for the purpose of carrying away goods or other materials from the point of sale, except as otherwise provided in this Division.

**§66.0804**      **Permitted Carryout Bags**

- (a)    All stores shall provide or make available to customers only recyclable paper single-use carryout bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the requirements of this Division.
- (b)    Nothing in this Division precludes a customer from carrying away goods or other materials from the point of sale using bags that the customer brings to the store, or from carrying away goods or other materials from the point of sale without using bags.

**§66.0805**      **Regulation of Recyclable Paper Single-Use Carryout Bags**

- (a)    A store that provides recyclable paper single-use carryout bags to customers shall charge the customer ten cents (\$0.10) for each bag provided, except as otherwise provided in this Division.
- (b)    No store shall rebate, credit, or reimburse a customer for any portion of the ten cents (\$0.10) per bag charge required in San Diego Municipal Code section 66.0805(a), except as otherwise provided in this Division.

(c) All stores shall provide or make available to every customer a receipt which states the number of recyclable paper single-use carryout bags provided to the customer at each transaction and the total amount charged to the customer for those bags.

(d) All stores shall retain all monies collected from customers pursuant to San Diego Municipal Code section 66.0805(a) and shall use such monies solely and exclusively for any of the following purposes:

- (1) to defray the costs associated with complying with this Division;
- (2) to defray the actual costs of providing recyclable paper single-use carryout bags to customers; and
- (3) to defray the costs associated with the store's educational materials and educational campaign, if any, promoting the use of reusable bags.

(e) Required Recordkeeping

(1) All stores shall retain complete and accurate records of the following information for a minimum period of three years from the first day of the calendar month in which the bags were provided:

- (A) the total number of recyclable paper single-use carryout bags provided each calendar month at a cost to customers;
- (B) the total number of recyclable paper single-use carryout bags provided each calendar month to customers at no cost under San Diego Municipal Code section 66.0807; and

(C) the total amount of monies collected each calendar month for providing *recyclable paper single-use carryout bags* to *customers*.

(2) All stores shall make the records (paper or electronic) described in San Diego Municipal Code section 66.0805(e)(1) available for inspection, upon 72 hours advance notice, by any City representative authorized to administer or enforce this Division, during regular business hours and at no cost to the City. All stores shall permit the City to reproduce any of those records at the City's cost. Unless the store and the City agree on an alternative location or method of review, the store shall make such records available in an accessible location and condition at the store location. At the time of inspection, the store owner or a responsible agent, officer, or representative of the store shall confirm in writing that the records made available to the City are complete and accurate.

**§66.0806 Use of Reusable Bags**

- (a) All stores shall provide or make available *reusable bags* to *customers* for a minimum of ten cents (\$0.10) per bag.
- (b) Notwithstanding San Diego Municipal Code section 66.0806(a), a store may provide or make available a *reusable bag* to a *customer* at no charge if the *reusable bag* is distributed as part of an infrequent and limited time



promotion. An infrequent and limited time promotion shall not exceed a total of 90 calendar days in any consecutive twelve month period.

- (c) All stores are encouraged to educate store staff to promote reusable bags and to post signs encouraging customers to use and maintain reusable bags.

**§66.0807 Exemptions**

Stores that provide recyclable paper single-use carryout bags or reusable bags pursuant to this Division shall provide such bags at no cost to any customer participating in either the California Special Supplemental Food Program for Women, Infants, and Children (California Health and Safety Code section 123275, et. seq., as may be amended) or the Supplemental Food Program (California Welfare and Institutions Code section 15500, et seq., as may be amended).

**§66.0808 Enforcement**

- (a) Authority. The Director is authorized to:
- (1) administer and enforce the provisions of this Division;
  - (2) adopt rules and regulations for the administration and enforcement of this Division; and
  - (3) exercise all enforcement powers as provided in Chapter 1 of the San Diego Municipal Code.
- (b) Remedies. It is unlawful for any responsible person (as defined in this Division) to violate any provision or requirement of this Division. The failure to comply with any requirement of this Division constitutes a

violation of this Division. Each instance of a violation of this Division is a separate offense. Violations of the provisions or requirements of this Division may be prosecuted as misdemeanors subject to the penalties provided in San Diego Municipal Code section 12.0201. The *Director* or designee may seek injunctive relief or civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or may pursue any administrative remedy provided in San Diego Municipal Code Chapter 1, Article 2, Divisions 3 through 10.

- (c) Remedies Cumulative. The remedies enumerated in San Diego Municipal Code section 66.0808 are in addition to and do not supersede or limit any and all other remedies, civil or criminal, available at law. The remedies provided for in this Division shall be cumulative and not exclusive.
- (d) Strict liability. Violations of this Division shall be treated as strict liability offenses regardless of intent.

**§66.0809**     **Compliance Date**

- (a) Category A stores and Category B stores shall comply with this Division beginning on \_\_\_\_\_.
- (b) Category C stores shall comply with this Division beginning on \_\_\_\_\_.

**§66.0810**      **Sunset Provision**

This Division shall be automatically repealed if Senate Bill 270 (California Public Resources Code section 42280, et seq.) is ratified at the November 8, 2016 statewide general election.

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