

ORDINANCE NUMBER O- 20720 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 10 2016

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.

WHEREAS, an estimated 700 million plastic single-use carryout bags and 29,474,000 paper single-use carryout bags are distributed within the City of San Diego (City) annually; and

WHEREAS, most plastic and paper single-use carryout bags are not recycled and contribute to the waste stream, and numerous studies document the prevalence of plastic single-use carryout bags littering the environment, blocking storm drains, and fouling beaches and the ocean environment; and

WHEREAS, plastic single-use carryout bags that become litter in the environment may impair the City's ability to comply with its Municipal Separate Storm Sewer System (MS4) Permit; and

WHEREAS, the California Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), requires each local jurisdiction in the State to divert 50% of waste from landfill disposal, and, in 2011, Assembly Bill 341 (AB 341) established a statewide goal to divert 75% of waste from landfill disposal by 2020; and

WHEREAS, on July 13, 2015, the City Council adopted a Zero Waste Plan that targets 75% waste diversion by the year 2020, 90% waste diversion by the year 2035, and Zero Waste by the year 2040; and

WHEREAS, the City operates the Miramar Landfill (Landfill), which currently is the only municipal landfill in the City, and preserving Landfill capacity in order to extend the useful life of the Landfill for the benefit of the City's citizens is of paramount concern; and

WHEREAS, reducing the use of single-use carryout bags will assist the City in its efforts to achieve State waste diversion rates, to meet the City's Zero Waste Plan targets, to extend the useful life of the Landfill, and to maintain compliance with the City's MS4 Permit; and

WHEREAS, the proposed ordinance is designed to reduce single-use carryout bag use by prohibiting the provision of plastic and non-recyclable paper single-use carryout bags at regulated stores, and requiring those stores to charge \$0.10 for each recyclable paper single-use carryout bag; and

WHEREAS, there are several alternatives to single-use carryout bags readily available in the City, including reusable bags made from sustainable materials; and

WHEREAS, the Rules and Economic Development Committee held public hearings on September 11, 2013 and October 23, 2013 to consider a proposed local single-use carryout bag reduction ordinance; and

WHEREAS, on October 23, 2013, the Rules and Economic Development Committee directed the Environmental Services Department to refine the proposed local single-use carryout bag reduction ordinance, prepare the appropriate environmental document, and present the item to the full City Council; and

WHEREAS, on September 30, 2014, Governor Brown signed Senate Bill 270 (SB 270) into law, which enacted a statewide law related to single-use carryout bags that preempts local single-use carryout bag reduction ordinances adopted on or after September 1, 2014; and

WHEREAS, on February 24, 2015, the Office of the Secretary of State confirmed that a referendum to overturn SB 270 qualified for the November 2016 ballot, thereby suspending SB 270 pending the results of the election in which the referendum is considered by state voters; and

WHEREAS, the City desires to adopt and implement a local single-use carryout bag reduction ordinance due to the uncertainty surrounding SB 270; and

WHEREAS, the City, as lead agency under the California Environmental Quality Act (CEQA), has prepared and completed an Environmental Impact Report and a Mitigation Monitoring and Reporting Program covering this activity; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 6 of the San Diego Municipal Code is amended by adding Division 8, sections 66.0801, 66.0802, 66.0803, 66.0804, 66.0805, 66.0806, 66.0807, 66.0808, 66.0809, and 66.0810 to read as follows:

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 FEB 06 2017.
- (b) Category C *stores* shall comply with this Division beginning on AUG 10 2017.

§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.

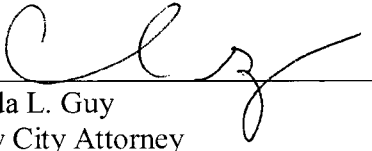
Section 2. The City Clerk is instructed to insert the date of the first day of the month to occur 180 calendar days after the date of final passage of this ordinance, once known, in the blank space provided in San Diego Municipal Code section 66.0809(a).

Section 3. The City Clerk is instructed to insert the date of the first day of the month to occur 365 calendar days after the date of final passage of this ordinance, once known, in the blank space provided in San Diego Municipal Code section 66.0809(b).

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Amanda L. Guy
Deputy City Attorney

GCL: ALG: bas: js
03/09/2015
Or.Dept: ESD
Doc No.: 970387

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 02 2016

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8/8/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor