

NUMBER: 287

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADDING CHAPTER 5 OF TITLE III OF THE MILPITAS MUNICIPAL CODE RELATING TO SINGLE-USE BAGS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary Baum, Interim City Attorney

RECITALS AND FINDINGS:

WHEREAS, the use of single-use carryout bags by consumers is detrimental to the environment, public health and general welfare; and

WHEREAS, the manufacture and distribution of single-use carryout bags requires the production of non-biodegradable plastics and results in the generation of greenhouse gas emissions; and

WHEREAS, single-use carryout bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean; and

WHEREAS, single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the State and taxpayers and constitute a public nuisance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE

Chapter 5 of Title III of the Milpitas Municipal Code is hereby added with the text below to read as follows:

Chapter 5

SINGLE-USE BAGS

Sections:

- III-5-1 Findings and Purpose**
- III-5-2 Definitions**
- III-5-3 Implementation Date**
- III-5-4 Single-use Carry-out Bag**
- III-5-5 Recordkeeping and Inspection**
- III-5-6 Enforcement**

Section 1 Findings and Purpose

III-5-1.00

The City Council finds and determines that the regulation of single-use carry-out bags is necessary to protect the public health, safety and welfare based on the following reasons:

- A. The use of single-use carry-out bags by consumers is detrimental to the environment, public health and general welfare;
- B. The manufacture and distribution of single-use carry-out bags requires the production of non-biodegradable plastics and results in the generation of greenhouse gas emissions;
- C. Single-use carry-out bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean; and
- D. Single-use carry-out bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This City Council does, accordingly, find and declare that it should restrict the provision of single-use carry-out bags.

Section 2 Definitions

III-5-2.00

A. "Customer" means any person obtaining goods from a retail establishment.

B. "Garment Bag" means a travel bag made of pliable, durable material with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

C. "Nonprofit charitable reuser" means 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.

D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

E. "Prepared food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. "Prepared food" does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.

F. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of prepared food to be eaten on or off its premises.

G. "Recycled paper bag" means a paper bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content.

H. "Retail establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the City of Milpitas. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

I. "Reusable bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag may meet the above criteria regardless of whether it has handles or not.

J. "Single-use carry-out bag" means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carry-out bags" do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a department within a store to the point of sale; (2) to hold prescription medication dispensed from a pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag.

Section 3 Implementation Date

III-5-3.00

This Chapter shall not be implemented until January 1, 2016.

Section 4 Single-use Carry-out Bag

III-5-4.00

A. No retail establishment shall provide a single-use carry-out bag to a customer, at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.

B. On or before January 1, 2016, a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. Notwithstanding this Section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

D. A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals: a customer participating in the California Special Supplement 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; a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code; and a customer participating in Calfresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

Section 5 Recordkeeping and Inspection

III-5-5.00

Every retail establishment shall keep complete and accurate records or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours by any City employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information including incomplete records or documents to the City shall be a violation of this Chapter.

Section 6 Enforcement

III-5-6.00

In addition to any other remedy available at law, City may enforce any violation of this Chapter pursuant to Section I-1-4.09 of the Milpitas Municipal Code.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.