

ORDINANCE NO. 13-2102

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ADDING CHAPTER 9.17 TO THE CUPERTINO MUNICIPAL CODE REGARDING
REGULATION OF SINGLE-USE CARRYOUT BAGS

The City Council of the City of Cupertino hereby ordains as follows:

Section 1. Addition of Chapter 9.17. Chapter 9.17 is hereby added to the Cupertino Municipal Code to read as follows :

CUPERTINO MUNICIPAL CODE

CHAPTER 9.17

REGULATION OF SINGLE-USE CARRYOUT BAGS

9.17.100 Findings and purpose

The City Council finds and determines that:

- (a) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.
- (b) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- (c) Single-use carryout bags contribute to environmental problems, including litter in stormdrains, creeks, the bay and the ocean.
- (d) Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

The City Council finds and declares that it should restrict the free distribution of single-use carryout bags.

9.17.110 Definitions

- 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. "Garment cover" means a protective textile cover with or without a handle, made of plastic, paper, or other material and used as a protective covering for clothing, draperies, or similar textiles after the professional cleaning, alteration, or repair of such items.

D. "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 of its revenues from the handling and sale of those donated goods or materials.

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

F. "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.

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

H. "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 post-consumer recycled content and is one hundred percent recyclable.

I. "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 City of Cupertino. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

J. "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 mils thick and is specifically designed and manufactured for multiple reuse.

K. "Single-use carryout 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 carryout 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.

9.17.120 Implementation date

This Chapter shall be implemented as of October 1, 2013.

9.17.130 Single-use carryout bag

A. No person or retail establishment shall provide a single-use carryout 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 or in section 9.17.140.

B. Effective October 1, 2013 a retail establishment may only make recycled paper bags available to customers if the retailer charges a minimum of ten cents. Reusable bags may be given by retailer without charge.

C. Effective January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents.

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

E. 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.

9.17.140 Exemptions

The provisions of this Chapter shall not apply in the following circumstances where:

1. A plastic or paper carryout bag with or without handles is provided by a public eating establishment to transport prepared food;
2. A plastic or paper bag with or without handles is provided by a nonprofit charitable reuser;
3. A plastic or paper bag without handles is provided to transport prepared food, produce, bulk food, or meat from a department within a store to the point of sale;
4. A plastic or paper bag without handles is provided to hold prescription medication dispensed from a pharmacy;
5. A plastic or paper bag without handles is used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled bag;
6. A garment bag or garment cover used to protect and transport clothing or other textiles.

9.17.150 Administrative citation and fine

(a) Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, when any person or retail establishment has provided a single-use carryout bag to a customer or violated any other provision of this Chapter.

(b) Administrative citation fine amounts. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:

- (1) First citation: One hundred dollars (\$100.00)
- (2) Second citation for the same violation within the same twelve month period: Two hundred dollars (\$200.00)
- (3) Third or any subsequent citation for the same violation within the same twelve month period: Five hundred dollars (\$500.00)
- (4) Each day that any person or retail establishment violates the provisions of this Chapter a new and separate violation occurs.

(c) Administrative citation appeals and disposition shall be processed in accordance with Chapter 1.10 of this Code.

9.17.160 Severability

If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section 2. Effective Date. This Ordinance shall be effective on October 1, 2013.

Section 3. CEQA Review. The County of San Mateo was the lead agency for environmental review under the California Environmental Quality Act (CEQA) and prepared and certified an Environmental Impact report analyzing the impacts of a reusable bag ordinance, banning single-use, carryout bags from stores, while requiring stores that provide recycled-content paper bags to charge customers a minimum of ten cents (\$.10) per bag. The EIR specifically analyzed the impacts of such an ordinance in the City of Cupertino, and the Cupertino City Council independently reviewed the EIR and determined that it was adequate for the City's use in adopting an ordinance. In addition, the City prepared an Addendum analyzing minor changes to the ordinance. The City Council reviewed the EIR and Addendum and adopted CEQA findings of fact on January 15 and March 5, 2013 and concluded that that the proposed ordinance (including modifications) will not result in any significant environmental effect.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 15th day of January 2013 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 5th day of March 2013, by the following vote:

Vote: Members of the City Council

Ayes: Mahoney, Wong, Chang, Santoro, Sinks

Noes: None

Absent: None

Abstain: None

ATTEST:

APPROVED:

Grace Schmidt 3/21/13 Orrin Mahoney

Grace Schmidt, City Clerk

Orrin Mahoney, Mayor, City of Cupertino

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 13-2102, which was enacted on March 5, 2013, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal
this 26th day of March, 2013.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California