

**Meeting Date:** 3/24/2015

**Report Type:** Consent

**Report ID:** 2015-00280

**Title: (Pass for Publication) Ordinance: Reduction of Single-Use Plastic and Paper Bags**

**Location:** Citywide

**Recommendation:** 1) Review a Resolution certifying an Environmental Impact Report and adopting Findings of Fact for an ordinance relating to the reduction of single-use plastic and paper bags; 2) review an Ordinance adding Chapter 5.154 to the Sacramento City Code, relating to the reduction of single-use plastic and paper bags; and 3) pass for publication the ordinance title as required by Sacramento City Charter section 32(c), to be adopted on March 31, 2015.

**Contact:** Erin Treadwell, Program Specialist, (916) 808-4934, Department of General Services

**Presenter:** None

**Department:** General Services

**Division:** Residential Recycling

**Dept ID:** 13001731

**Attachments:**

1-Description/Analysis

2-Resolution

3-Exhibit A

4-Ordinance

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### **City Attorney Review**

Approved as to Form

Kourtney Burdick

3/18/2015 1:24:07 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Reina Schwartz - 3/16/2015 2:39:00 PM

## Description/Analysis

**Issue Detail:** The proposed ordinance (also referred to as the “Reusable Bag Ordinance”) prohibits certain stores from distributing single-use plastic bags, and requires a minimum \$.10 fee on recycled paper bags and reusable bags. The intent of the proposed ordinance is to mitigate environmental impacts associated with single-use plastic bags and encourage consumers to use reusable shopping bags. Approximately 130 California jurisdictions have passed similar ordinances banning single-use plastic bags, and the proposed city ordinance would go into effect on January 1, 2016.

In 2013, staff prepared a draft ordinance to ban single-use plastic bags and promote the use of reusable bags in the City. The final draft of the City’s ordinance was completed in May 2013, and an Environmental Impact Report (EIR) on the proposed ordinance was issued for public comment in May 2014.

Concurrently, the California State Legislature passed a bill banning single-use plastic bags statewide. Senate Bill 270 (“SB 270”) was signed into law by Governor Brown in September 2014. At that time, the City suspended efforts to pass a local ordinance as the state law achieved similar objectives. However, opponents of SB 270 have gathered sufficient signatures to qualify for a statewide referendum to overturn SB 270. The referendum will appear on the November 2016 ballot, effectively suspending implementation of the state bill until after the vote. If the referendum is successful, there will be no statewide ban and the proposed City ordinance will remain in effect. If the referendum is unsuccessful, SB 270 will go into effect, and absent cleanup legislation by the Legislature to grandfather in the City’s ordinance (and other jurisdictions’ ordinances), the City’s ordinance would be preempted.

**Policy Considerations:** The proposed ordinance is consistent with the City Council’s goal in the Sustainability Master Plan to reduce consumption by working to reduce the use of disposable, toxic, or non-renewable materials within the City limits.

The proposed ordinance also supports the City’s Climate Action Plan goal to achieve 75 percent diversion of solid waste by 2020, and work towards becoming a “zero waste” community by 2040.

**Economic Impacts:** The proposed ordinance will have no impact on job creation in the Sacramento region.

**Environmental Considerations:** The primary environmental considerations associated with single-use plastic bags are that they: 1) contribute to litter and marine debris; 2) do not biodegrade; 3) are rarely recycled (<5 percent); 4) are difficult to handle at recycling and material recovery facilities; 5) are a major source of wind-blown debris at transfer stations and landfills; and 6) are a petroleum product that contributes to United States dependence on foreign oil and to climate change. Plastic bags also snag on trees and fences, and end up in bodies of water. The California Coastal Commission estimates that as much as 80 percent of all marine debris is plastic. With regard to plastic bags in particular, the Ocean Conservancy estimates that plastic bags kill 1 million seabirds and 100,000 other animals worldwide annually.

**California Environmental Quality Act (CEQA):** In accordance with CEQA Guidelines Section 15081, the City as Lead Agency, determined that an EIR should be prepared for the proposed project, Reusable Bag Ordinance. The EIR analyzed the potential impacts at a project level detail. The following were analyzed for potential impacts: air quality, global climate change, hydrology/water quality, public utilities and services. The EIR determined that

all impacts would be either less than significant or beneficial and thus no mitigation measures are required to reduce impacts to a less than significant level. Further, the proposed project would not result in any significant and unavoidable impacts necessitating a statement of overriding considerations. Therefore, this project does not contain a Mitigation Monitoring Plan (MMP) as no mitigation measures were identified within the Draft EIR for this project.

A Notice of Completion (NOC) and copies of the Draft EIR were distributed to the Office of Planning and Research on March 20, 2014 (SCH 2013122031). The 45-day public comment period began on March 20, 2014 and ended on May 5, 2014. A public notice was placed in the Daily Recorder on March 17, 2014 which stated that the Draft EIR was available for public review and comment. A public notice was posted in the office of the Sacramento County Clerk on March 19, 2014.

Following closure of the public comment period, no comments were received on the Draft EIR.

The Draft EIR and Final EIR are available on the Community Development Department's webpage at: <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports.aspx>.

**Sustainability:** See Policy and Environmental Considerations above.

**Commission/Committee Action:** In May 2013, the Law and Legislation Committee directed staff to proceed with the preparation of an EIR for the proposed Reusable Bag Ordinance and go directly to City Council for approval.

**Rationale for Recommendation:** Plastic bags have become an increasingly significant environmental problem throughout the United States. Approximately 130 jurisdictions in California have adopted ordinances banning plastic bags, and more jurisdictions are currently in the process of developing ordinances. California retailers distribute approximately 19 billion single-use plastic bags every year and it is estimated that less than five percent of these bags are recycled. These bags end up in landfills, rivers, bays, the ocean and other natural environments. These bags can break down into small pieces that contaminate soils and waterways and can be ingested by marine life, causing suffocation and the leeching of toxic materials into the water. While these bags are accepted as part of the city's curbside recycling program, they clog and slow sorting machines. On average, the city must shut down its sorting machinery six times per day to remove tangled bags, resulting in additional cost to the city and city's rate payers. The City is pursuing this ban to mitigate the negative environmental and public health impacts resulting from the use of single-use plastic bags, reducing litter and visual blight caused by these bags, and minimizing the cost and inconvenience of handling single-use plastic bags at the city's recycling centers.

**Financial Considerations:** Funding for the public education and compliance activities stipulated by this ordinance are included in the Recycling and Solid Waste Division operating budget (Fund 6007).

**Local Business Enterprise (LBE):** No goods or services are being purchased by the City as a result of this report.

## RESOLUTION NO. XXXX-

Adopted by the Sacramento City Council

### CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE REUSABLE BAG ORDINANCE

#### BACKGROUND

- A. The City Council is considering adopting an ordinance adding Chapter 5.154 to the Sacramento City Code, relating to the reduction of single-use plastic and paper bags (referred to as the “Proposed Ordinance,” “Reusable Bag Ordinance,” and the “Project”).
- B. In connection with the Proposed Ordinance, the City prepared an Environmental Impact Report.

#### BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council finds that the Environmental Impact Report for the Reusable Bag Ordinance, which consists of the Draft EIR and the Final EIR (Response to Comments) (collectively the “EIR”) has been completed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the Sacramento Local Environmental Procedures (Resolution 91-892).
- Section 2. The City Council certifies that the EIR was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, the State CEQA Guidelines and the Sacramento Local Environmental Procedures, and constitutes an adequate, accurate, objective and complete Final Environmental Impact Report in full compliance with the requirements of CEQA, the State CEQA Guidelines, and the Sacramento Local Environmental Procedures.
- Section 3. The City Council certifies that the EIR has been presented to it, that the City Council has reviewed the EIR and has considered the information contained in the EIR prior to acting on the proposed Project, and that the EIR reflects the City Council’s independent judgment and analysis.
- Section 4. Pursuant to CEQA Guidelines Sections 15091 and 15093, and in support of its approval of the Project, the City Council adopts the attached Findings of Fact and Statement of Overriding Considerations in support of approval of the Project as set forth in the attached Exhibit A of this Resolution.
- Section 5. The City Council directs that, upon approval of the Project, the City Manager shall file a notice of determination with the County Clerk of Sacramento County and, if the Project

requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to the provisions of CEQA section 21152.

Section 6. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Table of Contents:

Exhibit A - CEQA Findings of Fact and Statement of Overriding Considerations for the Reusable Bag Ordinance.

## CEQA Findings of Fact for an Ordinance Relating to the Reduction of Single-Use Plastic and Paper Bags

### Description of the Project

The Proposed Ordinance prohibits certain stores in the City from distributing single-use plastic bags and requires these stores to charge a minimum of ten cents for each recycled paper bag and reusable bag the store distributes. The intent of the Proposed Ordinance is to mitigate environmental impacts associated with single-use plastic bags and encourage consumers to use reusable shopping bags.

### Findings Required Under CEQA

#### 1. Procedural Findings

The City Council of the City of Sacramento finds as follows:

Based on the initial study conducted for the Proposed Ordinance, SCH # 2013122031, (herein after the "Project"), the City of Sacramento's Environmental Planning Services determined, on substantial evidence, that the Project may have a significant effect on the environment and prepared an environmental impact report ("EIR") on the Project. The EIR was prepared, noticed, published, circulated, reviewed, and completed in full compliance with the California Environmental Quality Act (Public Resources Code §21000 *et seq.* ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 *et seq.*), and the Sacramento Local Environmental Procedures, as follows:

- a. A Notice of Preparation of the Draft EIR was filed with the Office of Planning and Research and each responsible and trustee agency and was circulated for public comments December 16, 2013 through January 17, 2014. A public scoping meeting was held on January 9, 2014.
- b. A Notice of Completion (NOC) and copies of the Draft EIR were distributed on March 20, 2014 to the Office of Planning and Research, to public agencies that have jurisdiction by law with respect to the Project, to public agencies that exercise authority over resources that may be affected by the Project, and to other interested parties and agencies as required by law. The comments of such persons and agencies were sought.
- c. An official 45-day public comment period for the Draft EIR was established by the Office of Planning and Research. The public comment period began on March 20, 2014 and ended on May 5, 2014.
- d. A Notice of Availability (NOA) of the Draft EIR was mailed to all interested groups, organizations, and individuals who had previously requested notice in writing on March 20, 2014. The NOA stated that the City of Sacramento had completed the Draft EIR and that copies were available at the City of Sacramento, Community Development Department, 300 Richards Boulevard, Third Floor, Sacramento, California 95811. The letter also indicated that the official 45-day public review period for the Draft EIR would end on May 5, 2014.

- e. A public notice was placed in the Daily Recorder on March 20, 2014, which stated that the Draft EIR was available for public review and comment.
- f. A public notice was posted in the office of the Sacramento County Clerk on March 19, 2014.
- g. No comment letters were received during the public comment period.

## **2. Record of Proceedings**

The following information is incorporated by reference and made part of the record supporting these findings:

- a. The Draft and Final EIR and all documents relied upon or incorporated by reference;
- b. The City of Sacramento 2030 General Plan adopted March 3, 2009, and all updates;
- c. The Master Environmental Impact Report for the City of Sacramento 2030 General Plan certified on March 3, 2009, and all updates;
- d. Findings of Fact and Statement of Overriding Considerations for the Adoption of the Sacramento 2030 General Plan adopted March 3, 2009, and all updates;
- e. The Planning and Development Code of the City of Sacramento;
- f. Blueprint Preferred Scenario for 2050, Sacramento Area Council of Governments, December, 2004; and
- g. All records of decision, staff reports, memoranda, maps, exhibits, letters, synopses of meetings, and other documents approved, reviewed, relied upon, or prepared by any City commissions, boards, officials, consultants, or staff relating to the Project.

## **3. Findings**

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environment impacts that would otherwise occur. Mitigation measures or alternatives are not required, however, where such changes are infeasible or where the responsibility for the project lies with some other agency. (CEQA Guidelines, § 15091, sub. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, §§ 15093, 15043, sub. (b); see also Pub. Resources Code, § 21081, sub. (b).)

In seeking to effectuate the substantive policy of CEQA to substantially lessen or avoid significant environmental effects to the extent feasible, an agency, in adopting findings, need not necessarily address the feasibility of *both* mitigation measures and environmentally superior alternatives when contemplating approval of a proposed project with significant impacts. Where a significant impact can be mitigated to an “acceptable” level solely by the adoption of feasible mitigation measures, the agency, in drafting its findings, has no obligation to consider the feasibility of any environmentally superior alternative that could also substantially lessen or avoid that same impact — even if the alternative would render the impact less severe than would the proposed project as mitigated. (*Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California (“Laurel Heights I”)* (1988) 47 Cal.3d 376, 400-403.)

In these Findings, the City first addresses the extent to which each significant environmental effect can be substantially lessened or avoided through the adoption of feasible mitigation measures.

The California Supreme Court has stated that “[t]he wisdom of approving ... any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Goleta II* (1990) 52 Cal.3d 553 at 576.)

In support of its approval of the Project, the City Council makes the following findings for each of the potentially significant environmental effects and alternatives of the Project identified in the EIR pursuant to Section 21080 of CEQA and section 15091 of the CEQA Guidelines:

**A. Significant or Potentially Significant Impacts Mitigated to a Less Than Significant Level.**

The following potentially significant environmental impacts of the Project, including cumulative impacts, are identified to be a less than significant level and are set out below. Pursuant to section 21081(a)(1) of CEQA and section 15091(a)(1) of the CEQA Guidelines, as to each such impact, the City Council, based on the evidence in the record before it, finds that changes or alterations incorporated into the Project by means of conditions or otherwise, mitigate, avoid or substantially lessen to a level of insignificance these significant or potentially significant environmental impacts of the Project. The basis for the finding for each identified impact is set forth below.

**Air Quality**

Impact AQ-1: The ozone emissions associated with all types of carryout bag manufacture, transport, and use would decrease compared to existing conditions. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

Impact AQ-2: Incremental increase in air pollutant emissions associated with truck trips to deliver recycled paper and reusable bags to local retailers. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

## **Greenhouse Gas Emissions**

Impact GHG-1: The increase in the number of recycled paper and reusable bags would result in an incremental increase in GHG emissions compared to existing conditions. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

Impact GHG-2: The proposed ordinance would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

## **Hydrology/Water Quality**

Impact HWQ-1: The overall reduction in the total amount of carryout bags would incrementally reduce the amount of litter and waste entering storm drains, improving water quality. Mitigation is not required. Therefore, this is a *beneficial impact*.

Impact HWQ-2: The proposed ordinance could potentially alter processing activities related to bag production, which could potentially degrade water quality in some instances and locations. However, bag manufacturers would be required to adhere to existing federal, state, and local regulations related to hydrology and water quality. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

## **Utilities and Service Systems**

Impact U-1: The increased use of reusable bags would minimally increase water demand due to washing of reusable bags. However, sufficient water supplies are available to meet the projected increase in demand. Mitigation is not required. Therefore, this is a *less-than-significant impact*.

Impact U-2: Water use associated with washing reusable bags would incrementally increase wastewater generation. However, projected wastewater flows would remain within the capacity of Sacramento wastewater collection and treatment systems and would not exceed applicable wastewater treatment requirements. Therefore, this is a *less-than-significant impact*.

Impact U-3: The Proposed Ordinance would alter solid waste generation rates in Sacramento due to an increase in recycled paper and reusable bag use and a reduction in single-use plastic bag use. However, projected future solid waste generation would remain within the capacity of regional landfills. Therefore, this is a *less-than-significant impact*.

### **B. Significant or Potentially Significant Impacts for which Mitigation is Outside the City's Responsibility and/or Jurisdiction.**

There are no significant or potentially significant impacts for which mitigation is outside the City's responsibility and/or jurisdiction.

**C. Significant or Potentially Significant Impacts for which Mitigation Measures Found To Be Infeasible.**

There are no impacts found to be significant or potentially significant for which mitigation measures are found to be infeasible.

**D. Significant and Unavoidable Impacts.**

There are no significant and unavoidable impacts.

**E. Findings Related to the Relationship Between Local Short-term Uses of the Environment and Maintenance and Enhancement of Long-term Productivity.**

Based on the EIR and the entire record before the City Council, the City Council makes the following findings with respect to the project's balancing of local short term uses of the environment and the maintenance of long term productivity:

The Project would reduce the environmental impacts related to the use of single-use plastic and paper bags.

**F. Project Alternatives.**

The City Council has considered the Project alternatives presented and analyzed in the final EIR and presented during the comment period and public hearing process. Some of these alternatives have the potential to avoid or reduce certain significant or potentially significant environmental impacts, as set forth below. The City Council finds, based on specific economic, legal, social, technological, or other considerations, that these alternatives are infeasible. Each alternative and the facts supporting the finding of infeasibility of each alternative are set forth below.

**Alternatives Considered and Dismissed from Further Consideration**

1. No Charge for Paper Bags.
2. Exception for Biodegradable or Compostable Bags.
3. Mandated Retailer Incentives.
4. Plastic Bag Deposit Program.

These four alternatives were considered but rejected as infeasible for not meeting the basic project objectives.

**Summary of Alternatives Considered**

Alternative 1: No Project Alternative. Discussed below.

Alternative 2: Ban on Single Use Plastic Bags, \$0.25 fee on recycled paper bags and reusable bags. This alternative would prohibit Sacramento retailers from providing single-use plastic bags to customers at the point of sale. However, under this alternative, the Ordinance would mandate a minimum of a \$0.25 charge for recycled paper and reusable bags. This equates to a \$0.15 increase per bag over the minimum fee under the Proposed Ordinance.

Alternative 3: Ban on both single-use plastic bags and recycled paper bags. This alternative would prohibit Sacramento retailers from providing single-use plastic bags to customers at the point of sale. However, under this alternative, the Ordinance would also prohibit stores from providing single-use recycled paper bags at checkout. Only reusable bags would be available for purchase. As a result, no single-use plastic or recycled paper bags would be distributed at stores covered by ordinance. This would result in a decrease of about 73 million bags when compared to the Proposed Ordinance. It is assumed that all of the recycled paper bags would be replaced by reusable bags, which would be used 52 times each before disposal.

Alternative 4: Ban on all single-use plastic bags at all retailers, combined with a mandatory charge of \$0.10 for recycled paper bags. This alternative would prohibit all Sacramento retail establishments, including restaurants, from providing single-use plastic bags to customers at the point of sale. As a result, it is anticipated that this alternative would decrease the number of single-use plastic bags used in Sacramento to zero.

## **1. No Project/No Development Alternative**

The no project alternative assumes that the Reusable Bag Ordinance is not adopted or implemented. Single-use plastic and recycled paper bags would continue to be available free-of-charge to customers at most retail stores throughout the City of Sacramento. In addition, reusable bags would continue to be available for purchase by retailers.

### **Facts in Support of Finding of Infeasibility**

The City Council is not required to make findings rejecting the alternatives described in the Final EIR since all of the Project's impacts will be beneficial or less than significant. CEQA only requires public agencies to make findings regarding the feasibility of project alternatives in limited circumstances. Public Resources Code Section 21081(a) provides that a public agency may not approve a project unless it makes findings, with respect to each significant project effect, that: (1) mitigation has been required to reduce the significant effect; (2) mitigation to reduce the significant effect is within the jurisdiction of another public agency and should be adopted by that agency; and (3) that "[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report." (Pub. Res. Code Section 21081(a), emphasis added, see also CEQA Guidelines Section 15091(a).)

In *Mira Mar Mobile Community v. City of Oceanside* (CH Oceanside) (2004) 119

Cal.App.4th 477, 490, the Court of Appeals confirmed that, where the city found that the only adverse impact of a project could be avoided through the imposition of mitigation measures, "it was not required to make any findings regarding the feasibility of proposed alternatives." (Citing *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 379 ["CEQA does not require the agency to consider the feasibility of environmentally superior project alternatives identified in the EIR if described mitigation measures will reduce environmental impacts to acceptable levels"], *Laurel Heights Improvement Ass'n v. Board of Supervisors* (1988) 47 Cal.3d 376, 402, and *Laurel Hills Homeowners Ass'n v. City Council* (1978) 83 Cal.App.3d 515, 521.)

The Project would not result in any significant unavoidable effects. All potential impacts identified in the DEIR and FEIR are either beneficial or less than significant such that no mitigation measures are required. Accordingly, the City is not required to make findings regarding the feasibility of the alternatives considered in the EIR.

## ORDINANCE NO. 2015-

Adopted by the Sacramento City Council

March 31, 2015

### **AN ORDINANCE ADDING CHAPTER 5.154 TO THE SACRAMENTO CITY CODE, RELATING TO THE REDUCTION OF SINGLE-USE PLASTIC AND PAPER BAGS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Chapter 5.154 is added to the Sacramento City Code to read as follows:

#### **Chapter 5.154 REDUCTION OF SINGLE-USE PLASTIC AND PAPER BAGS**

##### **5.154.010 Legislative findings and intent.**

- A. It is the intent of the city in enacting this chapter to reduce the use of single-use plastic bags and paper bags, and encourage the use of reusable bags by consumers and retailers.
- B. California retailers distribute approximately 19 billion single-use plastic bags every year, equating to approximately 522 bags per person. It is estimated that less than five percent of those bags are recycled. The bags end up in landfills, rivers, bays, oceans, and other natural environments. Plastic bags can break down into small pieces that contaminate soils and waterways, and can be ingested by marine life causing suffocation.
- C. Due to their light weight, single-use plastic bags can easily become caught in the wind, contributing to litter and visual blight. Collecting these bags is challenging as they snag on trees and fences and are difficult to retrieve.
- D. While the city accepts single-use plastic bags in the curbside recycling program, handling these bags at the recycling center is cumbersome. The bags clog and slow sorting machines. On average, the processor must shut down its sorting machinery six times per day to remove tangled bags, which increases the processing cost for commingled recyclables.
- E. By enacting this chapter, the city intends to mitigate the negative environmental and public health impacts resulting from single-use plastic bags, reduce litter and visual

blight caused by plastic bags, and minimize the cost and inconvenience of handling single-use plastic bags at local recycling centers.

### **5.154.020 Definitions.**

As used in this chapter, the following definitions apply:

“City manager” means the city manager or his or her designee.

“Customer” means any person purchasing goods from a store.

“Postconsumer recycled material” means material that is recycled after completing its intended end use and product-life cycle. Postconsumer recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

“Single-use plastic bag” means any bag made of plastic derived from either petroleum 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 includes compostable and biodegradable bags. The term does not include reusable bags or bags without handles provided to a customer to:

1. Transport produce, bulk food, or meat from a produce, bulk food, or meat department within a store to the point of sale;
2. Hold a prescription medication dispensed from a pharmacy; or
3. Segregate food or merchandise that could be damaged or that could damage or contaminate other food or merchandise when placed together in one bag.

“Recycled paper bag” means a paper carryout bag that:

1. Is 100% recyclable;
2. Contains a minimum of 40% postconsumer recycled material;
3. Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400, as amended from time to time;
4. Displays the name of the manufacturer, the country where the bag was manufactured, and the percentage of postconsumer content the bag contains; and
5. Indicates that it is recyclable in a highly visible manner on the outside of the bag.

“Recyclable” means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product.

“Reusable bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements:

1. Is made of cloth, washable woven fabric, or other durable material that is at least 2.25 mils thick;
2. Is machine washable or capable of being cleaned and disinfected;
3. Is capable of carrying a minimum of 22 pounds over a distance of at least 175 feet, 125 times;
4. Has a minimum volume capacity of 15 liters;
5. Does not contain lead, cadmium, or any other heavy metal in toxic amounts, as defined by applicable state and federal regulations for packaging or reusable bags; and
6. Has printed on the bag, or on a tag that is permanently affixed to the bag, the name of the manufacturer; the 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 materials used, if any.

“Store” means any of the following retail establishments located within the city:

1. A supermarket, defined as a full-line, self-service retail store with gross annual sales of \$2,000,000, or more, and which sells a line of dry grocery, canned goods, or nonfood items and perishable items;
2. A store of 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 (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code; or
3. A convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, including milk, bread, soda, and snack foods, and that holds a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

#### **5.154.030 Ban on single-use plastic bags.**

Stores shall not provide a single-use plastic bag to any customer.

#### **5.154.040 Permitted bags.**

Stores shall make available to customers only recycled paper bags or reusable bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this chapter. Nothing in this chapter prohibits customers from using bags of any type that they bring to the store themselves or from carrying away goods that are not placed in a bag in lieu of using bags provided by the store.

#### **5.154.050 Store charge for recycled paper bags and reusable bags.**

- A. Stores shall charge a minimum of ten cents for each recycled paper bag or reusable bag provided to customers at the point of sale. Stores shall not reimburse or credit a customer any portion of the fee, except as otherwise provided in this section.
- B. Notwithstanding subsection A, a store may provide a reusable bag, free of charge, to any customer during a limited-time, in-store promotional event. Such events shall not exceed a total of 60 days within any consecutive 12-month period.
- C. Notwithstanding subsections A and B, stores shall provide, free of charge, either reusable bags or recycled paper bags or both, at the store's option, to any customer participating in either 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 California Health and Safety Code, or 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.
- D. Stores shall indicate on the customer receipt the number of recycled paper bags and reusable bags provided and the total amount charged for the bags.

#### **5.154.060 Recordkeeping and inspection.**

Stores shall keep complete and accurate records, for a minimum of three years from the date of sale, of the total number of recycled paper bags and reusable bags provided and the total amount of monies collected for providing recycled paper bags. Upon request by the city, each store shall make these records available for inspection by the city, at no cost, during regular business hours. Each store shall make the records available at the store's retail establishment unless the city agrees to an alternative location or method of review. A responsible agent or officer of the store shall confirm that the information provided is accurate and complete. Providing false or incomplete information to the city is a violation of this section.

**5.154.070 Violations.**

- A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.
- B. Violations of this chapter are hereby declared to be a public nuisance.
- C. Any person who violates a provision of this chapter is liable for civil penalties of not less than \$250 or more than \$25,000 for each day the violation continues.
- D. Any person who violates a provision of this chapter is guilty of an infraction.
- E. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof.

**5.154.080 Operative date.**

This chapter becomes effective January 1, 2016.