ORDINANCE NO. 1364

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY
ADDING CHAPTER 8.68 TO TITLE 8 OF THE DALY CITY MUNICIPAL CODE
RE: REUSABLE BAGS

The City Council of the City of Daly City, County of San Mateo, State of California, ORDAINS as follows:

SECTION 1: Findings. The City Council of the City of Daly City hereby finds and declares as follows:

WHEREAS, single-use carryout bags constitute a high percentage of litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts; and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags; and

WHEREAS, on October 23, 2012 the San Mateo County Board of Supervisors approved an Environmental Impact Report ("EIR") and adopted an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents ($.10) per bag; and

WHEREAS, County's ordinance encouraged cities within and neighboring the County to adopt similar ordinances and the County's EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and 6 cities in Santa Clara County) adopting the County's ordinance within their own jurisdictions; and

WHEREAS, the City intends this Ordinance to fall within the scope of the County's EIR and has therefore modeled this Ordinance on the County's ordinance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF THE CITY OF DALY CITY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 2: Chapter 8.68 of Title 8 of the Municipal Code is hereafter added to read as follows:

REUSABLE BAGS

8.68.010 Findings and Purpose
8.68.020 Definitions
8.68.030 Implementation Date
8.68.040 Single-use Carry-out Bag
8.68.050 Recordkeeping and Inspection
8.68.060 Administrative Fine
8.68.070 Enforcement

8.68.010 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 storm drains, 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.

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

8.68.020 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. "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.
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 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 post-consumer recycled content; is one hundred percent 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 Daly City. "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.

8.66.030 Implementation Date

This Chapter shall be implemented on or any time after April 22, 2013.

8.68.040 Single-use Carry-out Bag

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 December 31, 2014, 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. On or after 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 or a reusable 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.

8.68.050 Recordkeeping and Inspection

Every retail establishment shall keep complete and accurate record 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 years from the date of purchase and sale, which record shall be available for inspection at no cost to the County during regular business hours by any County 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 County shall be a violation of this Chapter.

8.68.060 Administrative Fine

(a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division of the County of San Mateo, or his or her designee, that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.

(b) Amount of Fine. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative fine as follows:
(1) A fine not exceeding one hundred dollars ($100.00) for a first violation;
(2) A fine not exceeding two hundred dollars ($200.00) for a second violation;
(3) A fine not exceeding five hundred dollars ($500) for the third and subsequent violations;
(4) Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.

(c) Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that the above listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

8.68.070 Enforcement

The City Council of Daly City hereby authorizes the Environmental Health Division of the County of San Mateo to enforce this Chapter within the City of Daly City, including, without limitation, the authority to hold hearings and issue administrative fines within the affected incorporated area of the City of Daly City.

SECTION 3: Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Daly City hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4: CEQA Review.

On October 23, 2012, the County of San Mateo adopted a Program Environmental Impact Report ("EIR") that analyzed the impacts of this reusable bag ordinance if adopted in cities through the County of San Mateo County as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq*. ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq*. It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Daly City acts as a responsible agency for adoption of this ordinance within the City of Daly City. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

1) The final Program Environmental Impact Report ("Final Program EIR") is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulation section 15000 *et seq* ("CEQA Guidelines), and the public comment period; and
2) On the basis of the Initial Study, Notice of Preparation, Final Program EIR, and public comment received by both the County of San Mateo and the City of Daly City, there is no substantial evidence that the project as proposed will have a significatnt effect on the environment; and
3) Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the City Council of the City of Daly City; and
4) None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to the adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the County's Final Program EIR and is within the scope of the project described in the County's Final Program EIR.
5) A Notice of Determination shall be filed pursuant to CEQA Guidelines sections 15094 and 15096.

SECTION 5: Publication and Effective Date.

Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk's Office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk's Office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting. This ordinance shall be in full force and effect thirty (30) days after adoption by the City Council of the City of Daly City.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY
ADDING CHAPTER 8.68 TO TITLE 8 OF THE DALY CITY MUNICIPAL CODE
RE: REUSABLE BAGS

Introduced this 12th day of December, 2012.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 14th day of January, 2013, by the following vote:

AYES, Councilmembers Canepa, Guingona, Klatt
Torres, Buenaventura

NOES, Councilmembers None

Absent, Councilmembers: None

K. Annette Pagona
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

RAYMOND A. BUENAVENTURA
MAYOR OF THE CITY OF DALY CITY

CITY COUNCIL, CITY OF DALY CITY, STATE OF CALIFORNIA
ORDINANCE SUMMARY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY ADDING CHAPTER 8.66 OF TITLE 8 OF THE DALY CITY MUNICIPAL CODE
REUSABLE BAGS

1. SUMMARY

Single use carryout bags constitute a high percentage of litter, which causes serious negative environmental impacts. The County of San Mateo recently adopted an ordinance banning single use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents per bag. The County encouraged cities within San Mateo County to adopt similar ordinances. The proposed Ordinance would prohibit the use of single use carryout bags from stores and would require stores that provide reusable bags to charge customers ten cents per bag.

Chapter 8.66 is added to the Daly City Municipal prohibiting single use carryout bags and requiring stores that provide reusable to charge ten cents per bag.

2. CERTIFICATION AND POSTING AFTER ADOPTION

This Ordinance was adopted on January 14, 2013. Within fifteen days after adoption (1) the Summary of this Ordinance was published in a newspaper of general circulation and circulated in the City, and (2) a certified copy of this Ordinance, with the names of those City Council members voting for or against, or otherwise voting, was posted in my office, all in accordance with Government Code Section 36933.

The vote was recorded as follows:

FOR: Canepa, Guingona, Klatt, Torres, Buenaventura

AGAINST: None
ABSTAIN: None
ABSENT: None

Dated: January 14, 2013

K. Annette Hipona
CITY CLERK OF THE CITY OF DALY CITY