

MEETING DATE: 05/28/2013

AGENDA ITEM: Adoption of an Ordinance Adding a New Chapter 11.16, Plastic Carryout Bag Regulations, to the Culver City Municipal Code.

ATTACHMENTS

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WHEREAS, the City Council desires to add a new Chapter 11.16, Plastic Carryout Bag Regulations, to the Culver City Municipal Code in order to mitigate the environmental impacts of plastic carryout bags.

SECTION 1. Chapter 11.16 is hereby added to the Culver City Municipal Code to read as follows:

Sections:

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| 11.16.005 | Definitions. |
| 11.16.010 | Plastic Carryout Bags Prohibited. |
| 11.16.015 | Permitted Bags. |
| 11.16.020 | Regulation of Recyclable Paper Carryout Bags. |
| 11.16.025 | Use of Reusable Bags. |
| 11.16.030 | Exempt Customers. |
| 11.16.035 | Operative Date. |
| 11.16.040 | Enforcement and Violation—Penalty. |
| 11.16.045 | No Conflict With Federal or State Law. |

The following definitions apply to this Chapter:

- A.** "Customer" means any person purchasing goods from a store.
- B.** "Operator" means the person in control of, or having the responsibility for, the operation of a store, which may include, but is not limited to, the owner of the store.

- 1 C. "Person" means any natural person, firm, corporation, partnership, or other
2 organization or group however organized.
- 3 D. "Plastic carryout bag" means any bag made predominantly of plastic derived from
4 either petroleum or a biologically-based source, such as corn or other plant sources,
5 which is provided to a customer at the point of sale. "Plastic carryout bag" includes
6 compostable and biodegradable bags but does not include reusable bags, produce
7 bags, or product bags.
- 8 E. "Postconsumer recycled material" means a material that would otherwise be
9 destined for solid waste disposal, having completed its intended end use and
10 product life cycle. "Postconsumer recycled material" does not include materials and
11 by-products generated from, and commonly reused within, an original manufacturing
12 and fabrication process.
- 13 F. "Produce bag" or "product bag" means any bag without handles used exclusively to
14 carry produce, meats, or other food items to the point of sale inside a store or to
15 prevent such food items from coming into direct contact with other purchased items.
- 16 G. "Recyclable" means material that can be sorted, cleansed, and reconstituted using
17 available recycling collection programs for the purpose of using the altered form in
18 the manufacture of a new product. "Recycling" does not include burning,
19 incinerating, converting, or otherwise thermally destroying solid waste.
- 20 H. "Recyclable paper carryout bag" means a paper bag that meets all of the following
21 requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%)
22 recyclable overall and contains a minimum of forty percent (40%) post-consumer
23 recycled material; (3) is capable of composting, consistent with the timeline and
24 specifications of the American Society of Testing and Materials (ASTM) Standard
25 D6400; (4) is accepted for recycling in curbside programs in the City; (5) has printed
26 on the bag the name of the manufacturer, the location (country) where the bag was
27 manufactured, and the percentage of postconsumer recycled material used; and (6)
28 displays the word "Recyclable" in a highly visible manner on the outside of the bag.
- I. "Reusable bag" means a bag with handles that is specifically designed and
manufactured for multiple reuse and meets all of the following requirements: (1) has
a minimum lifetime of 125 uses, which for purposes of this subsection, means the
capability of carrying a minimum of 22 pounds 125 times over a distance of at least
175 feet; (2) has a minimum volume of 15 liters; (3) is machine washable or is made
from a material that can be cleaned or disinfected; (4) does not contain lead,
cadmium, or any other heavy metal in toxic amounts; (5) has printed on the bag, or
on a tag that is permanently affixed to the bag, the name of the manufacturer, the
location (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 material used, if any; and (6) if made of
plastic, is a minimum of at least 2.25 mils thick.

1 J. "Store" means any of the following retail establishments located within the
2 incorporated area of Culver City:

3 1. A full-line, self-service retail store with gross annual sales of two million
4 dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods,
5 or nonfood items and some perishable items;

6 2. A store of at least 10,000 square feet of retail space that generates sales
7 or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax
8 Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue
9 and Taxation Code) and that has a pharmacy licensed pursuant to Chapter 9
10 (commencing with Section 4000) of Division 2 of the Business and
11 Professions Code; or

12 3. A drug store, pharmacy, supermarket, grocery store, convenience food
13 store, foodmart, or other entity engaged in the retail sale of a limited line of
14 goods that includes milk, bread, soda, and snack foods, including those
15 stores with a Type 20 or 21 license issued by the Department of Alcoholic
16 Beverage Control.

13 **11.16.010 Plastic Carryout Bags Prohibited.**

14 A. No store shall provide to any customer a plastic carryout bag.

15 B. This prohibition applies to bags provided for the purpose of carrying away goods
16 from the point of sale and does not apply to produce bags or product bags.

17 **11.16.015 Permitted Bags.**

18 All stores shall provide or make available to a customer only recyclable paper carryout
19 bags or reusable bags for the purpose of carrying away goods or other materials from the
20 point of sale, subject to the terms of this Chapter. Nothing in this Chapter prohibits
21 customers from using bags of any type that they bring to the store themselves or from
22 carrying away goods that are not placed in a bag, in lieu of using bags provided by the
23 store.

22 **11.16.020 Regulation of Recyclable Paper Carryout Bags.**

23 A. Any store that provides a recyclable paper carryout bag to a customer must charge
24 the customer at least 10 cents (\$0.10) for each bag provided, except as otherwise
25 provided in this Chapter.

26 B. The City Council may increase the 10 cent (\$0.10) minimum charge by Resolution.

27 C. No store shall rebate or otherwise reimburse a customer any portion of the minimum
28 charge required in Subsection A, except as otherwise provided in this Chapter.

- 1 D. All stores must post signage clearly indicating the per bag charge for recyclable
2 paper carryout bags.
- 3 E. All stores must indicate on the customer receipt the number of recyclable paper
4 carryout bags provided and the total amount charged for the bags.
- 5 F. All monies collected by a store under this Chapter will be retained by the store and
6 may be used only for any of the following purposes: (1) costs associated with
7 complying with the requirements of this Chapter, (2) actual costs of providing
8 recyclable paper carryout bags, or (3) costs associated with a store's educational
9 materials or education campaign encouraging the use of reusable bags, if any.
- 10 G. All stores must keep records of the total number of recyclable paper carryout bags
11 provided, the total amount of monies collected for providing recyclable paper
12 carryout bags, and a summary of any efforts a store has undertaken to promote the
13 use of reusable bags by customers in the prior calendar year. Such records must
14 be made available for the Director of Public Works or his/her designee to review at
15 any time.

11.16.025 Use of Reusable Bags.

- 13 A. All stores must provide reusable bags to customers, either for sale or at no charge.
- 14 B. Each store is strongly encouraged to educate its staff to promote reusable bags and
15 to post signs encouraging customers to use reusable bags.

11.16.030 Exempt Customers.

17 All stores must provide at the point of sale, free of charge, either reusable bags or
18 recyclable paper carryout bags or both, at the store's option, to any customer participating
19 either in the California Special Supplemental Food Program for Women, Infants, and
20 Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of
21 Division 106 of the Health and Safety Code or in the Supplemental Food Program pursuant
22 to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and
23 Institutions Code.

11.16.035 Operative Date.

23 This Chapter shall become operative six (6) months after its effective date for stores
24 defined in Subsections J(1) and J(2) of Section 11.16.010. For stores defined in
25 Subsection J(3) of Section 11.16.010, this Chapter shall become operative twelve (12)
26 months after its effective date.

1 **11.16.040 Enforcement and Violation--Penalty.**

- 2 **A.** The Director of Public Works has primary responsibility for enforcement of this
3 Chapter. The Director of Public Works is authorized to promulgate regulations and
4 to take any and all other actions reasonable and necessary to enforce this Chapter,
5 including, but not limited to, investigating violations, issuing fines and entering the
6 premises of any store during business hours.
- 7 **B.** If the Director of Public Works determines that a violation of this Chapter has
8 occurred, he/she will issue a written warning notice to the operator of a store that a
9 violation has occurred and the potential penalties that will apply for future violations.
- 10 **C.** Any store that violates or fails to comply with any of the requirements of this Chapter
11 after a written warning notice has been issued for that violation shall be guilty of an
12 infraction.
- 13 **D.** If a store has subsequent violations of this Chapter that are similar in kind to the
14 violation addressed in a written warning notice, the following penalties will be
15 imposed and shall be payable by the operator of the store:
- 16 1. A fine not exceeding one hundred dollars (\$100.00) for the first
17 violation after the written warning notice is given;
 - 18 2. A fine not exceeding two hundred dollars (\$200.00) for the second
19 violation after the written warning notice is given; or
 - 20 3. A fine not exceeding five hundred dollars (\$500.00) for the third and
21 any subsequent violations after the written warning notice is given.
- 22 **E.** A fine shall be imposed for each day a violation occurs or is allowed to continue.
- 23 **F.** Any store operator who receives a written warning notice or fine may request an
24 administrative review of the accuracy of the determination or the propriety of any
25 fine issued, by filing a written notice of appeal with the Director of Public Works no
26 later than 30 days after receipt of a written warning notice or fine, as applicable. The
27 notice of appeal must include all facts supporting the appeal and any statements
28 and evidence, including copies of all written documentation and a list of any
witnesses, that the appellant wishes to be considered in connection with the appeal.
The appeal will be heard by the Director of Public Works. The Director of Public
Works will conduct a hearing concerning the appeal within 45 days from the date
that the notice of appeal is filed, or on a later date if agreed upon by the appellant
and the Director of Public Works, and will give the appellant 10 days prior written
notice of the date of the hearing. The Director of Public Works may sustain, rescind,
or modify the written warning notice or fine, as applicable, by written decision. The
Director of Public Works will have the power to waive any portion of the fine in a
manner consistent with the decision. The decision of the Director of Public Works is

1 final and effective on the date of service of the written decision, is not subject to
2 further administrative review, and constitutes the final administrative decision.

3 **11.16.045 No Conflict With Federal or State Law.**

4 Nothing in this ordinance is intended to create any requirement, power or duty that is in
5 conflict with any federal or state law.

6 **SECTION 2.** Pursuant to Section 619 of the City Charter, this Ordinance
7 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
8 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
9 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
10 Culver City News and shall post this Ordinance or a summary thereof in at least three
11 places within the City.

12 **SECTION 3.** The City Council hereby declares that, if any provision, section,
13 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
14 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
15 reason of any preemptive legislation, then the City Council would have independently
16 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
17 or words of this ordinance and as such they shall remain in full force and effect.
18

19 **APPROVED AND ADOPTED** this _____ day of _____, 2013.
20

21
22 JEFFREY COOPER, Mayor
23 City of Culver City, California

24
25 **ATTEST:**

APPROVED AS TO FORM:

26
27 MARTIN R. COLE, City Clerk

28 for CAROL A. SCHWAB, City Attorney