

**ORDINANCE NO. 2089, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING A NEW CHAPTER 8.52 (PLASTIC CARRYOUT BAGS) TO TITLE 8 (HEALTH AND SAFETY) OF THE MORGAN HILL MUNICIPAL CODE RELATED TO SINGLE-USE CARRYOUT BAGS**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 8.52 ADDED. A new Chapter 8.52 (Plastic Carryout Bags) is hereby added to Title 8 (Health and Safety) of the Morgan Hill Municipal Code, which new Chapter shall be numbered and entitled and shall read in its entirety as follows:

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**Chapter 8.52**

**PLASTIC CARRYOUT BAGS**

**8.52.010 Definitions.**

**8.52.020 Plastic carryout bags prohibited.**

**8.52.030 Permitted bags.**

**8.52.040 Regulation of recyclable paper carryout bags.**

**8.52.050 Use of reusable bags.**

**8.52.060 Exemptions.**

**8.52.070 Operative date.**

**8.52.080 Enforcement and violation--penalty.**

**8.52.090 No conflict with federal or state law.**

**8.52.010 Definitions.**

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.
- C. "Permitted carryout bag" means a recyclable paper carryout bag or a reusable bag.
- D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- E. "Plastic carryout bag" means any bag made predominantly 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. "Plastic carryout bag" includes compostable and biodegradable bags but does not include reusable bags, produce bags, or product bags.

F. "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed 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.

G. "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.

H. "Produce bag" or "product bag" means any bag without handles provided to a customer (1) to carry produce, meats, or other food items to the point of sale inside a store; (2) to hold prescription medication dispensed from a pharmacy; (3) to protect food or merchandise from being damaged or contaminated by other food or merchandise when items are placed together in a reusable bag or recyclable paper carryout bag; or (4) a bag without handles that is designed to be placed over articles of clothing on a hanger.

I. "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

J. "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. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

K. "Recyclable paper carryout bag" means a paper bag that meets all of the following requirements: (1) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled material; (2) is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; (3) is accepted for recycling in curbside programs in the City; (4) has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of postconsumer recycled material used; and (5) displays the word "Recyclable" in a highly visible manner on the outside of the bag.

L. "Reusable bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) meets the EcoLogo ATP-001 standard for durability Dynamic

Test with a minimum of 1500 cycles of testing; (2) meets the EcoLogo ATP-001 standard for durability Capacity Test with 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 as determined by testing using State methods following the Model Toxics in Packaging Legislation; (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 as measured according to ASTM D6988-08 or ISO 4593-1993 or ISO 4591:1992 standards.

The Director of Community Services or his or her designee is authorized to approve alternate testing methods meeting this section's requirements provided that the proposed testing standards satisfactorily comply with the intent, quality and effectiveness in order to meet the purposes of this Chapter.

M. "Store" means any of the following retail establishments located within the City limits of the City of Morgan Hill that are not "public eating establishments" as defined in Section 8.52.010(I):

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

(2) A store of at least 5,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and 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);

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

(4) A store or other location of less than 5,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and 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), excluding temporary events and mobile vendors operating without a fixed place of business.

**8.52.020 Plastic carryout bags prohibited.**

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

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

**8.52.030 Permitted bags.**

All operators of stores shall provide or make available to a customer only recyclable paper carryout 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.

**8.52.040 Regulation of permitted carryout bags.**

A. (1) Any operator of a store that provides a permitted carryout bag to a customer must charge the customer a minimum of 10 cents (\$0.10) for each bag provided, except as otherwise provided in this Chapter.

(2) An operator of a store shall adjust the minimum charge for permitted carryout bags set forth in 8.52.040.(A)(1) as of July 1, 2014 and annually on July 1 thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) (CPI-U), or successor index compiled and published by the United States Department of Labor, Bureau of Labor Statistics. The index level as of December 2012 (i.e. 239.533) shall be the base index and shall be compared with the index in subsequent years. The minimum charge will be adjusted only when the percentage change from the base index would result in a difference of at least \$0.05 in the minimum charge. In no event shall the adjustment exceed \$0.05 per year.

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

C. All operators of stores must indicate on the customer receipt the number of recyclable paper carryout bags provided and the total amount charged for the bags.

D. All operators of stores must retain a complete and accurate record or documents showing the total number of recyclable paper carryout bags provided, the total number of reusable bags provided and the total amount of monies collected for providing recyclable paper carryout bags and reusable bags, and a summary of any efforts a store has undertaken to promote the use of reusable bags by customers. Records will include permitted carryout bags provided free of charge per the exemptions in 8.52.060. Such information must be retained for a minimum period of three years from the date of purchase and made available upon request at no cost to the Director of Community Services.

E. If the information required in Subsection (d) is not timely submitted by an operator of a store, such operator of a store shall be subject to the fines set forth in Section 8.52.080.

**8.52.050 Use of reusable bags.**

Operators of stores are strongly encouraged to educate their staff to promote reusable bags and to post signs encouraging customers to use reusable bags. In order to promote the use of reusable bags, operators of stores may provide reusable bags to customers at no charge for a limited time of not more than thirty days per year.

**8.52.060 Exemptions.**

A. All operators of stores must provide at the point of sale, free of charge, permitted carryout bags to any customer participating in the California Special Supplemental 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 or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code, or in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

B. This Chapter shall not apply to 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.

**8.52.070 Operative date.**

A. Stores, and the operators thereof, as defined in subsections (M)(1), (M)(2), (M)(3), and (M)(4) of Section 8.52.010 shall become subject to this Chapter on April 22, 2014.

**8.52.080 Enforcement and violation--penalty.**

A. The Director of Community Services has primary responsibility for enforcement of this Chapter. The Director of Community Services is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, issuing fines and entering the premises of any store during business hours.

B. If the Director of Community Services determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the

operator of a store that a violation has occurred and the potential penalties that will apply for future violations.

C. Any operator of a store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.

D. If a store has subsequent violations of this Chapter that are similar in kind to the violation addressed in a written warning notice, the Director of Community Services may issue or cause to be issued an administrative citation imposing the fine for such violation as set forth in Chapter 1.19 of the Morgan Hill Municipal Code.

E. A fine shall be imposed for each day a violation occurs or is allowed to continue.

**8.52.090 No conflict with federal or state law.**

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

SECTION 3. CEQA-COMPLIANCE. The City Council hereby determines that this project is categorically exempt from the provisions of the California Environmental Quality Act, together with regulatory guidelines promulgated thereunder (collectively, "CEQA") pursuant to Sections 15307 and 15308 of the CEQA Guidelines describing projects that protect natural resources or protect the environment. The Director of Community Development may file a Notice of Exemption with the County Clerk pursuant to CEQA guidelines.

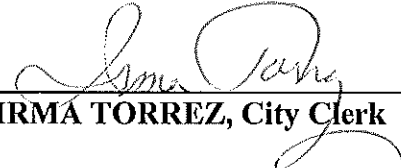
SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

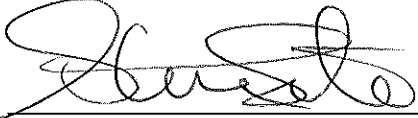
THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 2<sup>nd</sup> DAY OF OCTOBER 2013, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6<sup>th</sup> DAY OF NOVEMBER 2013, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Larry Carr, Rich Constantine, Steve Tate  
NOES: COUNCIL MEMBERS: None  
ABSTAIN: COUNCIL MEMBERS: None  
ABSENT: COUNCIL MEMBERS: Marilyn Librers, Gordon Siebert

ATTEST:

  
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IRMA TORREZ, City Clerk

APPROVED:

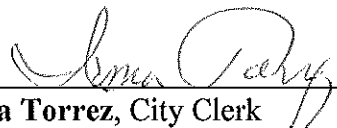
  
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STEVE TATE, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2089, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6<sup>th</sup> Day of November 2013.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 11/26/13

  
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Irma Torrez, City Clerk