

ORDINANCE 2011-01

AN ORDINANCE TO REGULATE THE USE OF CARRYOUT BAGS AND PROMOTE THE USE OF REUSABLE BAGS

The Board of the Alameda County Waste Management Authority (“Authority”) ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 11.

SECTION 2 (Findings)

- (a) The purpose of this Ordinance is to reduce the use of single use carryout bags and promote the use of reusable bags at the point of sale in Alameda County.
- (b) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and pursuant to Section 5.m of the CoIWMP, the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) Reducing single use bag use is reasonably necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies.
- (d) Goal 1 of the CoIWMP is to promote environmental quality, ensure protection of public health and safety, and to minimize environmental impacts in all aspects of solid waste management. Policy 1.4.1 includes reduction of hard to recycle materials;
- (e) Goal 2 of the CoIWMP calls on the Authority and its member agencies to “achieve maximum feasible waste reduction” and to “reduce the amount of waste disposed at landfills through improved management and conservation of resources.”
- (f) Policy 2.1.1 adopts a waste management hierarchy that ranks management of waste through source reduction and then recycling and composting above landfill disposal.
- (g) Goal 7 of the CoIMWP is to "Promote Inter-jurisdictional Cooperation." Policy 7.1.3 states that the Authority shall coordinate with other organizations as needed to fulfill its countywide role including coordinating on related issues such as

water and litter. Objective 7.8 states that the Authority will coordinate and facilitate program implementation by individual or subregional groupings of member agencies.

- (h) Numerous studies have documented the prevalence of plastic carry-out bags littering the environment, blocking storm drains and fouling beaches.
- (i) Plastic bags are a substantial source of marine debris.
- (j) Plastic bags cause operational problems at County landfills and transfer stations and contribute to litter countywide.
- (k) The Authority has participated in a campaign with The Bay Area Recycling Outreach Coalition to promote reusable bags countywide for several years. Despite these efforts, plastic bags comprise 9.6% of litter collected during coastal cleanup days (based on 2008 data) in Alameda County. Additionally, plastic bags continue to cause processing equipment problems at County transfer stations.
- (l) There are several alternatives to single-use carry-out bags readily available;
- (m) Studies document that banning single use plastic bags and charging for single use paper bags will dramatically reduce the single use of both types of bags.
- (n) The Authority prepared, considered and certified the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects and included the environmental review required by the California Environmental Quality Act for this Ordinance.

SECTION 3 (Definitions)

The definitions set forth in this Section shall govern the application and interpretation of this ordinance.

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Enforcement Official to implement this Ordinance, including Member Agency employees, or private contractors hired for purposes of monitoring and enforcement.
- (d) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 9 of this Ordinance.

- (e) “Customer” means any Person obtaining goods from a Store.
- (f) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (g) “Executive Director” means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (h) "Member Agency" means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas of each Member Agency for the purpose of Section 9 of this Ordinance are:
 - i. The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts.
 - ii. The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.
 - iii. The unincorporated sections of the County not included within the above.
- (i) “Nonprofit Charitable Reuse Organization" means a charitable organization recognized as having Section 501 (c)(3) status by 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.
- (j) “Person” means an individual, firm, public or private corporation, limited liability company, partnership, industry or any other entity whatsoever.
- (k) “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 byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- (l) "Recycled Paper Bag” means a paper bag provided by a store 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 and that contains no old growth fiber and a minimum of forty percent (40%) postconsumer recycled material; is one hundred percent (100%) recyclable and compostable, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400; and has printed in a highly visible manner on the outside of the bag the words “Recyclable,” the name and location of the

manufacturer, and the percentage of post-consumer recycled content.

- (m) "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, as defined by applicable state and federal standards and regulations for packaging or reusable bags; 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.
- (n) "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 for the purpose of transporting food or merchandise out of the establishment. Single-Use Carryout Bags do not include bags provided to transport produce, bulk food or meat from a produce, bulk food or meat department within a Store to the point of sale.
- (o) "Store" means any of the following stores located within Covered Jurisdictions:
 - i. 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;
 - ii. 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
 - iii. 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 include milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control.

SECTION 4 (Carryout Bag Restrictions)

- (a) No Store shall provide a Single-Use Carryout Bag or Reusable 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 after January 1, 2013 except as provided in this Section.

- (b) On or before January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of ten cents (\$0.10).
- (c) On or after January 1, 2015, a Store may make available for sale to a Customer a Recycled Paper Bag or a Reusable Bag for a minimum price of twenty-five cents (\$0.25). This restriction, however, shall not apply if the Authority finds, after January 1, 2013, that the number of paper Single Use Carryout Bags has not increased significantly as a result of this Ordinance, in which case the minimum ten cents (\$0.10) per bag price provided in Section 4(b) shall apply.
- (d) No Store may make available for sale a Recycled Paper Bag or Reusable Bag unless the amount of the sale of the Recycled Paper Bag and Reusable Bag is separately itemized on the sales receipt.
- (e) A Store may provide a Reusable Bag at no charge if it is distributed as part of an infrequent and limited time promotion.
- (f) *Alternative 1:* An infrequent and limited time promotion shall not exceed ___ continuous days or ___ days in any 12 consecutive month period.

Alternative 2: Prior to holding an infrequent and limited time promotion, bags used for such promotion must have been tested by an independent third party and satisfy the definition of Reusable Bags in this Ordinance. Test results shall be provided to the Enforcement Official.

- (g) A Store may provide a 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 California Health and Safety Code and 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, with Reusable Bags or Recycled Paper Bags at no charge at the point of sale.

SECTION 5 (Permitted Bags)

Nothing in this Ordinance 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.

SECTION 6 (Exemptions)

This Ordinance does not apply to:

- (a) Single-Use Carryout Bags or Reusable Bags distributed to Customers by food providers for the purpose of safeguarding public health and safety during the transportation of prepared take-out foods and liquids intended for consumption away from the food provider's premises.
- (b) Single-Use Carryout Bags or Reusable Bags used by public eating establishments or Nonprofit Charitable Reuse Organizations.

SECTION 7 (Recordkeeping and Inspection)

- (a) Every Store shall keep complete and accurate records or documents of the purchase and sale of any Recycled Paper Bags and Reusable Bags by the Store for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the Authority during regular business hours by any Authority Representative authorized to enforce this Ordinance. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store address.
- (b) The provision of false information including incomplete records or documents to the Authority shall be a violation of this Ordinance.
- (c) Authority Representatives are authorized to conduct any other inspections necessary to further the goals of this Ordinance.

SECTION 8 (Enforcement and Phasing)

- (a) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (b) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (c) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts

detailed in Section 8(b) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine must be paid within 30 days of the notice of violation and must be deposited prior to any requested hearing. A hearing will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. The Executive Director, or its designee, shall conduct the hearing and issue a final written order. If it is determined that no violation occurred, the amount of the fine shall be refunded. The Authority shall serve the final order on the Person subject to the notice of violation by first class, overnight or certified mail.

- (d) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.
- (e) Enforcement of this ordinance shall be phased on the following schedule. Prior to January 1, 2013, Stores will be notified and public education and outreach activities will take place. Warnings and enforcement actions will be taken as needed after January 1, 2013.

SECTION 9 (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the distribution of Single-Use Carryout Bags and Reusable Bags, including more stringent requirements than those in this Ordinance, provided that any such regulation or ordinance does not conflict (e.g., is not less stringent) than the provisions of this Ordinance.
- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body prior to March 2, 2012 may choose to exclude its service area from this Ordinance.
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance.

SECTION 10 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and

to this end the provisions of this Ordinance are declared to be severable.

SECTION 11 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2012-01

GARY WOLFF
EXECUTIVE DIRECTOR