

ORDINANCE NO. 26-

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE TO AMEND SECTIONS 9.17.100, 9.17.110,
9.17.130, 9.17.140 TO REGULATE SINGLE - USE CARRYOUT BAGS**

The City Council of the City of Cupertino finds that:

1. WHEREAS, on October 1, 2013, the City of Cupertino adopted an ordinance to regulate the provisions of retail establishments providing single-use carryout bags, currently codified as Chapter 9.17 of the City Code; and
2. WHEREAS, this ordinance amendment continues to regulate the distribution and sale of single-use carryout bags by retail establishments in Cupertino; and
3. WHEREAS, the State adopted SB 1053 in September 2024, which commencing January 1, 2026, would revise and recast provisions to prohibit the distribution of single-use plastic carryout bags by retail establishments

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO
DOES ORDAIN AS FOLLOWS:**

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino

Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action to regulate the use of single-use carryout bags by a retail establishment would have no or only a de minimis effect on the environment because reducing the use of disposable plastic single-use carryout bags would not have the potential for causing a significant effect on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on April 21, 2026 and **ENACTED** at a regular meeting of the Cupertino City Council on May 5, 2026 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Kitty Moore, Mayor City of Cupertino	_____ Date
ATTEST: _____ Lauren Sapudar, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Floy Andrews, Interim City Attorney Aleshire & Wynder, LLP	_____ Date

**Attachment A –AN ORDINANCE OF THE CITY OF CUPERTINO TO REGULATE
THE PROVISION OF SINGLE - USE CARRYOUT BAGS**

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

CHAPTER 9.17: REGULATION OF SINGLE-USE CARRYOUT BAGS

9.17.100 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.
- (e) **The City of Cupertino seeks to reduce the proliferation of plastic pollution by eliminating the existing provision of law that allows plastic film carryout bags to be distributed as reusable bags.**

In compliance with Public Resources Code Section 442279 et seq. ~~The~~ City Council finds and declares that ~~it should restrict the free~~ distribution of single-use plastic carryout bags **should be banned.**

(Ord. 13-2102, § 1 (part), 2013)

9.17.110 Definitions.

A. "Customer" means any person obtaining goods from a retail establishment.

~~A~~ **B. "Compostable" means eligible to be labeled with the terms "compostable" or "home compostable" pursuant to Public Resources Code Section 42357. Compostable bags must meet the requirements pursuant to California Public Resource Code Section 42281.2.**

~~A~~ 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.

~~B.~~ C. "Garment cover" means a protective textile cover with or without a handle, made of plastic, paper, or other material and used as a protective covering for clothing, draperies, or similar textiles after the professional cleaning, alteration, or repair of such items.

~~C.~~ D. "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.~~ E. "Person" means any natural person, firm, corporation, partnership, or other organization or group, however organized.

E. F. "Point of sale" means a place where purchased goods may be transferred to a customer, including but not limited to, a checkout counter, self-checkout kiosk, in-store pickup, curbside delivery, and home delivery.

F.G. "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.

G.H. "Pre-checkout Bag" means a recycled paper or compostable bag without handles provided to a customer before the customer reaches the point of sale, that is designed to protect a purchased item from damaging or contaminating other purchased items in a carryout bag, or to contain an unwrapped food item, including but not limited to, loose produce, meat or fish, nuts, grains, candy, and bakery goods.

I J. "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.

J K. "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.

~~L. "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 and is one hundred percent recyclable.~~ means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the

requirements for postconsumer recycled material content, recyclability, and labeling pursuant to Public Resources Code 42280 (e).

M. "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.

~~**N.**~~ "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 City of Cupertino. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

O. "Reusable bag" means either a bag made of cloth or other machine washable ~~fabrie~~ **material** that has handles, ~~or a durable plastic bag with handles that is at least 2.25~~ ~~mils thick~~ and is specifically designed and manufactured for multiple reuse.

~~**P.**~~ "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, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carryout 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.

(Ord. 13-2102, § 1 (part), 2013)

9.17.120 Implementation Date.

This Chapter shall be implemented as of October 1, 2013.

(Ord. 13-2102, § 1 (part), 2013)

9.17.130 Single-Use Carryout Bags.

A. No person or retail establishment shall provide a ~~Single-Use Carryout 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 or in section 9.17.140.

B. A retail establishment may only make recycled paper ~~or reusable bags~~ available to customers if the retailer charges a minimum of ten cents.

C. Notwithstanding this section, no retail establishment may make available for sale a recycled paper ~~or reusable bag~~ unless the amount of the sale of such bag is separately itemized on the sale receipt.

D. A retail establishment may provide one or more recycled paper ~~or reusable 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.

D. E A store shall not require a customer to use, purchase, or accept a recycled paper bag as a condition of sale of any product.

(Ord. 22-2239, § 1 (part), 2022; Ord. 14-2122, § 1, 2014; Ord. 13-2102, § 1 (part), 2013)

9.17.140 Exemptions.

1. ~~A plastic or paper carryout bag with or without handles may be provided by a~~

~~public eating establishment to transport prepared food; Beginning September 6, 2023, A~~ public eating establishment may ~~no longer~~ provide single-use plastic carryout bags but may provide a recycled paper or reusable bag to transport prepared food at no charge.

2. A ~~plastic or~~ **recycled** paper bag with or without handles may be provided by a nonprofit charitable reuser **at no charge**.
3. A ~~plastic or paper bag without handles~~ **pre-checkout bag** may be provided to transport prepared food, produce, bulk food, or meat from a department within a store to the point of sale.
4. A ~~plastic or paper bag without handles~~ **pre-checkout bag** may be provided to hold prescription medication dispensed from a pharmacy.
5. A ~~plastic or paper bag without handles~~ **pre-checkout bag** may be used to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled **paper carryout** bag.
6. A garment bag or garment cover may be used to protect and transport clothing or other textiles.

(Ord. 22-2239, § 1 (part), 2022; Ord. 13-2102, § 1 (part), 2013)

9.17.150 Administrative Citation and Fine.

- (a) Grounds for an administrative citation. An administrative citation may be issued upon findings made by the City Manager, or his or her designee, when any person or retail establishment has provided a single-use carryout bag to a customer or violated any other provision of this Chapter.
- (b) Administrative citation fine amounts. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative citation pursuant to Chapter 1.10 of this Code. Fines for the administrative citation are as follows:

- (1) First citation: One hundred dollars (\$100.00)
 - (2) Second citation for the same violation within the same twelve month period:
Two hundred dollars (\$200.00)
 - (3) Third or any subsequent citation for the same violation within the same
twelve month period: Five hundred dollars (\$500.00)
 - (4) Each day that any person or retail establishment violates the provisions of
this Chapter a new and separate violation occurs.
- (c) Administrative citation appeals and disposition shall be processed in accordance
with Chapter 1.10 of this Code.

(Ord. 13-2102, § 1 (part), 2013)

9.17.160 Severability.

If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

(Ord. 13-2102, § 1 (part), 2013)