

**CITY OF WALNUT CREEK  
ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK  
ADDING CHAPTER 6 OF TITLE 5 OF THE WALNUT CREEK MUNICIPAL CODE  
PROHIBITING RETAILERS AND PUBLIC EATING ESTABLISHMENTS FROM  
PROVIDING SINGLE USE CARRYOUT BAGS TO CUSTOMERS, REQUIRING  
RETAILERS TO IMPOSE MINIMUM CHARGES FOR RECYCLED PAPER  
CARRYOUT BAGS, AND PROMOTING THE USE OF REUSABLE BAGS BY RETAIL  
AND PUBLIC EATING ESTABLISHMENT CUSTOMERS**

The City Council of the City of Walnut Creek does ordain as follows:

**Section 1.**

Chapter 6 of Title 5 of the Walnut Creek Municipal Code is hereby added to read as follows:

**Chapter 6  
CARRYOUT BAGS**

Section 5-6.101 Definitions

Section 5-6.102 Plastic Carryout Bags Prohibited

Section 5-6.103 Permitted Bags

Section 5-6.104 Regulation of Recycled Paper Carryout Bags for Retail Establishments

Section 5-6.105 Use of Reusable Bags

Section 5-6.106 Enforcement

***5-6.101. Definitions.***

For the purposes of this chapter only, the following words and phrases shall have the meanings defined in this section unless the context clearly requires otherwise:

- a) *Carryout Bag* means any bag, including a Plastic Bag, provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food, merchandise, or other goods out of a Retail Establishment or a Public Eating Establishment. Carryout Bags do not include Produce Bags or Product Bags.
- b) *Customer* means any person purchasing goods from a Retail Establishment or a Public Eating Establishment.
- c) *Inspector* means an individual designated by the City Manager to conduct any inspections required or permitted under this Chapter.
- d) *Operator* means the person in control of, or having the responsibility for, the operation of a Retail Establishment or Public Eating Establishment, which may include, but is not limited to, the owner of a Retail Establishment or a Public Eating Establishment.

- e) *Person* means any natural person, firm, corporation, partnership, or other organization or group however organized.
- f) *Plastic Bag* means any bag made predominantly of plastic derived from either petroleum, ethylene derived from natural gas, or a biologically-based source, such as corn or other plant sources. The term “Plastic Bag” includes compostable and biodegradable bags but does not include Reusable Bags, Recycled Paper Carryout Bags, Produce Bags, or Product Bags.
- 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 by-products generated from, and commonly reused within, an original manufacturing and fabrication process.
- h) *Prepared Food* means foods or beverages which are prepared on premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed, other than heating. Prepared food does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed or mixed.
- i) *Produce Bag* means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside a Retail Establishment or to prevent such food items from coming into direct contact with other purchased items.
- j) *Product Bag* means a bag integrated into the packaging of the product or a bag used (1) to hold prescription medication dispensed from a pharmacy; or (2) 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 (examples include small paper bag for greeting cards, paper bags to protect glass bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, etc.).
- k) *Public Eating Establishment* means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- l) *Recyclable* means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purposes 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.
- m) *Recycled Paper Carryout Bag* means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) Postconsumer Recycled Material; (3) displays the word “Recyclable: in a highly visible manner on the outside of the bag; and (4) and displays the percentage of Postconsumer Recycled Material used. Recycled Paper Carryout Bags do not include Produce Bags or Product Bags.

- 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 a Customer; and is located within or doing business within the geographical limits of the City of Walnut Creek.
- o) *Reusable Bag* means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all 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) is machine washable or capable of being cleaned and disinfected; (3) 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; and (4) if made of plastic, a minimum of 2.25 mils thick.

#### ***5-6.102. Plastic Carryout Bags Prohibited.***

No Retail Establishment or Public Eating Establishment shall provide any Carryout Bag to a Customer except as provided in this Chapter.

#### ***5-6.103. Permitted Bags.***

All Retail Establishments or Public Eating Establishments shall provide or make available to a Customer only Recycled 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 ordinance. Nothing in this Chapter prohibits Customers from using bags of any type that they bring to the Retail Establishment or Public Eating Establishment themselves or from carrying away goods that are not placed in a bag.

#### ***5-6.104. Regulation of Recycled Paper Carryout Bags for Retail Establishments.***

1. Any Retail Establishment that provides a Recycled Paper Carryout Bag to a Customer must charge the Customer for each bag provided, except as otherwise provided in this Chapter.
2. The minimum charge per Recycled Paper Carryout Bag will initially be ten cents (\$0.10). The City Manager may increase the minimum charge up to no more than twenty-five cents (\$0.25) if he or she finds the amount should be increased to appropriately disincentivize consumers from electing to use Recycled Paper Carryout Bags. All collected monies will be retained by the Retail Establishment.
3. All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carryout Bags provided and the total amount charged for the bags.

***5-6.105. Use of Reusable Bags.***

1. All Retail Establishments must make Reusable Bags available to Customers for purchase. Exemptions will be made for sanctioned reusable bag giveaway events that are intended to promote the use of Reusable Bags not exceeding a total of 90 days in any consecutive 12-month period.
2. Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags.

***5-6.106. Inspection.***

An Inspector shall have the right to enter any Retail Establishment or Public Eating Establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this Chapter.

***5-6.107. Enforcement.***

1. Those individuals specified in Title 1, Chapter 7 of this Code are 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 citations, and entering the premises of any Retail Establishment or Public Eating Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment or Public Eating Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager or his/her designee.
2. If any of those individuals specified above determine that a violation of this Chapter has occurred, he/she will issue a written warning notice to the Operator of the Retail Establishment or Public Eating Establishment that a violation has occurred and the potential penalties that will apply for future violations.
3. Any Retail Establishment or Public Eating Establishment that violates or fails to comply with any of the requirements of this Chapter after a written notice has been issued for a previous violation shall be guilty of an infraction punishable as specified in Title 1 of this Code.

**Section 3. Statutory Construction & Severability.**

It is the intent of the City Council of the City of Walnut Creek to supplement applicable state and federal law and not to contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences,

clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Walnut Creek hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 4. Publication and Effective Date; Operative 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 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 become effective thirty (30) days from the date it is adopted and shall become operative six (6) months for Retail Establishments from the date it is adopted and for Public Eating Establishments nine (9) months from the date it was adopted.