

ORDINANCE NO. 2014-11

**ADDING CHAPTER 7-7 TO THE TOWN OF DANVILLE MUNICIPAL CODE
ESTABLISHING REGULATIONS FOR CARRYOUT BAGS PROVIDED TO
CUSTOMERS BY RETAILERS AND PUBLIC EATING ESTABLISHMENTS**

The Danville Town Council does ordain as follows:

SECTION 1. FINDINGS.

In enacting this ordinance, the Town Council makes the following findings:

1. The State of California has adopted legislation (SB 270) which will prohibit grocery stores and some, but not all, retail establishments from providing single-use carryout bags at the point of sale to customers. The legislation also establishes standards for reusable grocery bags. SB 270 does not apply to public eating establishments.
2. SB 270 allows local jurisdictions to adopt their own ordinances establishing local standards for single-use plastic bags, so long as the local jurisdiction adopted a Resolution of Intent prior to September 15, 2014 and adopts the ordinance prior to January 1, 2015.
3. The Danville Town Council adopted a Resolution of Intent prior to September 15, 2014 and has determined that it is appropriate to adopt a local ordinance addressing single use plastic bags in a manner which is best suited to Danville's merchants and customers. The Danville Town Council finds that banning single use plastic bags in all retail and public eating establishments and actively working to provide reusable shopping bags to consumers and encourage their use will further the goals of reducing the environmental impacts of single-use plastic bags while minimizing the burden on Danville merchants.
4. The Danville Town Council also finds that by delaying the effective date of this ordinance to July 1, 2016, local retailers and public eating establishments will have adequate time to implement the ordinance and will be on the same time schedule as smaller retailers required to comply with SB 270.

SECTION 2. ADDING A NEW CHAPTER 7-7 TO THE TOWN OF DANVILLE MUNICIPAL CODE

A new Chapter 7-7 is hereby added to the Danville Municipal Code to read as follows:

**CHAPTER 7-7
CARRYOUT BAGS**

Section 7-7.1 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 the Town's Code Enforcement Officer or any other Town officer or employee designated by the Town Manager pursuant to Section 1-5.8 of this Code 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 Town of Danville.

- (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.

Section 7-7.2 Prohibition of Plastic Carryout Bags.

No Retail Establishment or Public Eating Establishment shall provide any Plastic Carryout Bag to a Customer.

Section 7-7.3 Permitted Bags.

- (a) 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.
- (b) 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.

Section 7-7.4 Use of Reusable Bags

- (a) All Retail Establishments are strongly encouraged to make Reusable Bags available to Customers for purchase.
- (b) Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags.

Section 7-7.5 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.

Section 7-7.6 Enforcement

- (a) Upon finding that a violation of this Chapter has occurred, an Inspector shall 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.
- (b) Any Retail Establishment or Public Eating Establishment that violates or fails to comply with any of the requirements of this Section after a written notice has been issued for a previous violation shall be guilty of an infraction.

SECTION 3. CEQA FINDINGS.

The Danville Town Council finds that adoption of this ordinance is categorically exempt from the California Environmental Quality Act ("CEQA") under Sections 15307 and 15308 of the CEQA Guidelines, consistent with the analysis and conclusion reached by the California Court of Appeal in *Save the Plastic Bag Coalition v. County of Marin*(2013) 218 Cal.App.4th 209.

SECTION 4. CODIFICATION.

Section 2 of this ordinance shall be codified in the Danville Municipal Code.

SECTION 5. PUBLICATION. The City Clerk shall have a summary of this ordinance published twice in a newspaper of general circulation, once within five (5) days before its adoption and once within 15 (fifteen) days after adoption. This ordinance shall become effective 30 days after adoption.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective on July 1, 2016.

SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Danville Town Council hereby declares that they would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases was declared invalid.

The foregoing ordinance was introduced on November 18, 2014 and approved and adopted by the Danville Town Council at a regular meeting on December 16, 2014, by the following vote:

AYES: Doyle, Stepper, Arnerich, Storer, Morgan

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE


MAYOR

APPROVED AS TO FORM:


CITY ATTORNEY


ATTEST:


CITY CLERK

CLERK'S CERTIFICATE

I, Marie Sunseri, City Clerk of the Town of Danville, hereby certify that the foregoing is a true and accurate copy of Ordinance No. 2014-11 of said Town and that said ordinance was published according to law.

Dated: 1/5/15


City Clerk of the
Town of Danville