

RESOLUTION NO..

EMERGENCY REGULATION NO. 2020-003

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

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**EMERGENCY REGULATION 2020-003 OF THE COUNTY OF SAN MATEO
TEMPORARILY SUSPENDING, COUNTYWIDE, ANY REQUIREMENT THAT RETAIL
ESTABLISHMENTS CHARGE FOR RECYCLED PAPER BAGS OR REUSABLE
BAGS**

SECTION 1. FINDINGS.

The Board of Supervisors of the County of San Mateo (the “Board”) hereby makes the following findings in support of the immediate adoption and application of this Emergency Regulation (the “Emergency Regulation”):

WHEREAS, on March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the “Health Officer”) declared a local health emergency throughout San Mateo County related to the novel coronavirus (“COVID-19”); and

WHEREAS, on March 10, 2020, the San Mateo County Board of Supervisors ratified and extended this declaration of local health emergency and on April 7, 2020, the Board of Supervisors further extended this local health emergency, which remains in effect throughout San Mateo County; and

WHEREAS, on March 3, 2020, and pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Director of Emergency Services proclaimed a local emergency throughout San Mateo County related to COVID-19; and

WHEREAS, on March 10, 2020, the Board ratified and extended the proclamation of local emergency, and on April 7, 2020, the Board further extended the proclamation

of local emergency (“Local Emergency”), which remains in effect; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19, effective throughout the State of California; and

WHEREAS, on March 14, 2020, the Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancellation of all gatherings of 10 or more people in a single confined space; and

WHEREAS, on March 16, 2020, the Health Officer issued an order that, among other things, directs all individuals currently living within San Mateo County to shelter in their place of residence (“Original Shelter-in-Place Order”), and authorizes individuals to leave their residences only for certain “Essential Activities,” Essential Governmental Functions,” or to operate “Essential Businesses,” all as defined in the Original Shelter-in Place-Order; and

WHEREAS, on March 31, 2020, April 29, 2020, and May 15, 2020, the Health Officer issued revised Shelter-in-Place Orders extending the expiration date of the Original Shelter-in-Place Order due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; and

WHEREAS, although the revised Shelter-in-Place Order issued on May 15, 2020, a copy of which is attached to **Exhibit “A”** of this Emergency Regulation, allows for the limited resumption of some businesses and activities within the County, it requires that most businesses and activities remain restricted until further order of the Health Officer; and

WHEREAS, it is critical to protect public health and safety and minimize the risk of COVID-19 exposure to workers engaged in essential activities, such as those handling and bagging groceries or other retail products; and

WHEREAS, contact exposure at retail establishments from reusable bags from people's homes could spread COVID-19, necessitating precautions to reduce the risk of exposure to COVID-19; and

WHEREAS, accordingly, in order to minimize unnecessary contact during the COVID-19 pandemic, the County Shelter-in-Place Orders, the most recent of which was issued on May 15, 2020, require grocery stores and other retailers to prohibit customers from bringing their own bags into retail establishments; and

WHEREAS, on April 22, 2020, Governor Newsom issued Executive Order N-54-50, which, in part, suspends California Public Resources Code section 42283 for a period of 60 days to the extent that it prohibits retail establishments from providing, without charge, reusable bags or recycled paper bags to customers at point of sale; and

WHEREAS, even with these actions, the number of identified COVID-19 cases continues to grow, and there are 1687 confirmed cases, and 75 COVID-19 related deaths within the County, as of May 20, 2020, and more than 81,000 confirmed COVID-19 cases, and 3334 COVID-19 related deaths, in California, as of that date; and

WHEREAS, Section 8634 of the Government Code provides that during a local emergency, the governing body of a political subdivision of the State "may promulgate orders and regulations necessary to provide for the protection of life and property," and that section requires that such orders "shall be in writing and shall be given widespread publicity and notice;" and

WHEREAS, the California Attorney General has opined that when a county has declared a local emergency within its jurisdictional boundaries in an area that includes both unincorporated and incorporated territory, the county may adopt emergency rules and regulations pursuant to Section 8634 of the Government Code that will be effective in both unincorporated and incorporated areas (62 Ops. Cal. Atty. Gen. 701 (1979)); and

WHEREAS, the County of San Mateo, pursuant to its police powers, has broad authority to maintain public peace, health, and safety for residents throughout the County; and

WHEREAS, in 2012, the County adopted Chapter 4.114 of the San Mateo County Ordinance Code (“Chapter 4.114”), which prohibits retail establishments from providing, without charge, reusable bags or recycled paper bags to customers at points of sale, and Chapter 4.114 presently requires that retail establishments charge a minimum of twenty-cents per bag; and

WHEREAS, with the exception of the Cities of Woodside, Hillsborough and Atherton, all cities and towns located in San Mateo County have adopted ordinance code provisions analogous to Chapter 4.114, which presently require that retail establishments charge a minimum of twenty-five cents for each reusable bag or recycled paper bag provided to customers; and

WHEREAS, of those cities and towns located in San Mateo County that have adopted ordinance code provisions analogous to Chapter 4.114, each city or town, with the exception of the Cities of Millbrae and Half Moon Bay, has consented to enforcement of the ordinance by the Environmental Health Services Division of San Mateo County Health (“EHS”); and

WHEREAS, the Governor’s Executive Order N-54-20 does not apply to Chapter 4.114 because it was adopted prior to the State’s enactment of Public Resources Code section 42283, and therefore, retail establishments countywide are still required to charge, and may still be charging, customers a minimum of twenty-five cents per bag for reusable bags and recycled paper bags; and

WHEREAS, in order to avoid the recyclable paper bag and reusable bag fees otherwise required under Chapter 4.114 and analogous ordinance code provisions of cities and towns located in San Mateo County, residents in the County may attempt to bring their own bags from home, which undermines the Health Officer’s prohibition on

customers of retail establishments bringing reusable bags from home as a measure to prevent unnecessary contact during the COVID-19 pandemic; and

WHEREAS, in addition to jeopardizing public health, failure to immediately suspend Chapter 4.114 and analogous ordinance code provisions of cities and towns located in San Mateo County to the extent they prohibit retail establishments from providing reusable bags or recycled paper bags without charge to customers at point of sale, will worsen the already severe economic impacts of COVID-19 for many low income residents; and

WHEREAS, the challenges of affording the high cost of living in the County have been exacerbated as a result of the Local Emergency and the issuance of the County and Statewide shelter-in-place orders to combat the COVID-19 emergency, and many County residents have experienced sudden and substantial income loss due to business and school closures, layoffs or reductions in work hours and extraordinary out-of-pocket medical expenses, making it extremely burdensome for them to pay any additional living expenses, however small; and

WHEREAS, many County residents are struggling to pay for housing and other basic necessities, and may be especially harmed by the routine imposition of a charge for reusable bags or recyclable paper bags at retail establishments, such as grocery stores, when they are prohibited from bringing in their own reusable bags from home, owing to retail establishments implementing certain social distancing measures to reduce the risk of contact exposure to COVID-19 in compliance with Health Officer directives; and

WHEREAS, EHS has received anecdotal information that some retailers in the County are presently not charging customers for recycled paper bags or reusable bags and this Emergency Regulation, if adopted, would clarify that retailers that make this accommodation for their customers will not be acting in violation of the County Ordinance or analogous city and town ordinances in doing so; and

WHEREAS, given these consequences to public health and safety throughout the County – in both unincorporated and incorporated areas, the County finds and determines that an immediate suspension of Chapter 4.114 and analogous ordinance code provisions of cities and towns located in San Mateo County to the extent they prohibit retail establishments from providing without charge reusable bags or recycled paper bags to customers at point of sale until the date that retail establishments are no longer required, pursuant to Health Officer order or other authority, to prohibit customers from bringing their own bags into retail establishments, is necessary to curb the spread of COVID-19 across all areas of the County and contain the virus to the greatest extent possible and thereby serve the public peace, health and safety and welfare of residents; and

WHEREAS, the Board finds that this Emergency Regulation is reasonably related to the protection of life and public health and safety throughout the entire jurisdictional boundaries of the County, given the County-wide nature of the Local Emergency; and

WHEREAS, this Emergency Regulation will not supersede any otherwise applicable State laws or Executive Orders; and

WHEREAS, in adopting this Emergency Regulation, the County is taking action consistent with its authority under Government Code Sections 8630 and 8634 and Chapter 2.46 of the County Ordinance Code; and

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo, State of California, orders as follows:

SECTION 2. JURISDICTION.

Pursuant to the County's police powers during a local emergency as set forth in Government Code Sections 8430 and 8634, and Chapter 2.46 of the County Ordinance Code, this Emergency Regulation shall apply throughout the entire geographic boundary of the County, including all incorporated cities and towns and unincorporated areas.

SECTION 3. SUSPENSION OF SUBSECTIONS C. AND D. OF SECTION 4.114.040 OF CHAPTER 4.114 OF THE SAN MATEO COUNTY ORDINANCE CODE AND ANALOGOUS PROVISIONS OF ORDINANCE CODES OF CITIES AND TOWNS LOCATED IN SAN MATEO COUNTY.

- A. As of the Effective Date of this Emergency Regulation and continuing until the date that retail establishments are no longer required, pursuant to Health Officer order or other authority, to prohibit customers from bringing their own bags into retail establishments, subsections C. and D. of Section 4.114.040 of Chapter 4.114 of the County of San Mateo County Ordinance Code, and analogous ordinance code provisions of the cities and towns located in San Mateo County that mandate a minimum charge by retail establishments for the provision of reusable bags or recycled paper bags to customers,¹ are suspended.

¹ Ord. No. 1069, § 4, eff. February 8, 2013 (City of Belmont); Ord. No. 580, § 1, eff. June 18, 2013 (City of Brisbane); Ord. No. 1883, § 2, eff. April 22, 2013 (City of Burlingame); Ord. No. 716, eff. January 25, 2013 (Town of Colma); Ord. No. 1364, § 2, eff. February 14, 2013 (City of Daly City); Ord. No. 360, § 1, eff. May 3, 2013 (City of East Palo Alto); Ord. No. 571 § 1 (part), eff. April 22, 2013 (City of Foster City); Ord. No. C-2013-03 §1 (part), eff. April 22, 2013 (City of Half Moon Bay); Ord. No. 989 § 1 (part), eff. April 22, 2013 (City of Menlo Park); Ord. No. 742, § 1, eff. March 17, 2013 (City of Millbrae); Ord. No. 792-C.S., § 1, eff. April 22, 2013 (City of Pacifica); Ord. No. 2013-398, § 1, eff. April 22, 2013 (Town of Portola Valley); Ord. No. 2393, § 1, eff. April 25, 2013 (City of Redwood City); Ord. No. 1810, § 1, eff. February 22, 2013 (City of San Bruno); Ord. No. 1455, § 2 (part), eff. July 1, 2013 (City of San Carlos); Ord. No. 2013-7 § 1, eff. June 6, 2013 (City of San Mateo); Ord. No. 1459, § 1, eff. January 12, 2013 (City of South San Francisco).

- B. This Emergency Regulation does not prevent any retail establishment from charging for recyclable paper bags and reusable bags if the retail establishment chooses to do so.
- C. Nothing in this Emergency Regulation is intended to displace any otherwise applicable State laws or Executive Orders.

SECTION 4. SEVERABILITY.

If any provision of this Emergency Regulation is declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of the Board that such invalid provisions(s) be severed from the remaining provisions of this Emergency Regulation.

SECTION 5. NO MANDATORY DUTY.

Nothing in this Emergency Regulation is intended to create a mandatory duty on the part of the County, County employees, any Cities or City employees, to protect persons or property from a violation of the provisions of this Emergency Regulation.

SECTION 6. EFFECTIVE DATE.

This Emergency Regulation is effective immediately and shall remain in effect until the date that retail establishments are no longer required, pursuant to Health Officer order or other authority, to prohibit customers from bringing their own bags into retail establishments.

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