

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
ENACTING A NEW CHAPTER 8.07 OF THE CAPITOLA MUNICIPAL CODE
RELATED TO THE REDUCTION OF SINGLE-USE
PLASTIC AND PAPER CARRYOUT BAGS**

BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:

Section 1. Chapter 8.07 is hereby added to the Capitola Municipal Code to read as follows:

**“CHAPTER 8.07”
SINGLE-USE PLASTIC AND PAPER CARRYOUT BAG REDUCTION**

Sections:

8.07.010 Purpose and Findings

8.07.020 Definitions

8.07.030 Ban on Plastic Carryout Bags and Store Charge for Single-Use Paper Carryout Bags

8.07.040 Implementation

8.07.050 Exemptions Allowing Single Use Bags

8.07.060 Enforcement

8.07.070 Violations

8.07.080 Severability

8.07.090 Effective Date

8.07.100 No Conflict With Federal or State Law

8.07.110 Preemption

8.07.010 Purpose and Findings.

A. It is the intent of the City of Capitola, in enacting Chapter 8.07 to eliminate the common use of plastic single-use carryout bags, encourage the use of reusable bags by consumers and retailers, and to reduce the consumption of single-use bags in general.

B. Whereas the City of Capitola has an obligation to protect the environment, the economy, and public health. The City of Capitola has a 75 percent waste reduction goal, which is to be reached by waste reduction, reuse, recycling, and composting. The City of Capitola makes the following findings:

1. The Department of Resources Recycling and Recovery (CalRecycle) estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further the Environmental Protection Agency estimates that only 5 percent of the plastic bags in California and nationwide are currently recycled.

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2. According to Save Our Shores, a Santa Cruz based marine conservation non-profit that conducts beach, river, and inland cleanups in the coastal regions of Santa Cruz, San Mateo, and Monterey Counties, from June 2007 to May 2011, over 400 cleanups were conducted where volunteers removed a total of 26,000 plastic bags. Unchecked, this material would have likely entered the marine environment of the Monterey Bay National Marine Sanctuary.

3. Plastic bags returned to supermarkets may be recycled into plastic lumber; however, a very low percentage of bags are actually returned. Recycling bags into lumber does not reduce the impact of making new plastic carryout bags. The CalRecycle 2009 Statewide Recycling Rate for Plastic Carryout Bags report indicates that of the 52,765 tons of regulated bags purchased statewide, only 1,520 tons were collected for recycling, a recycling rate of about 3%.

4. The City of Capitola currently has a plastic bag recycling component to the residential curbside recycling program.

5. Improperly prepared plastic bags create equipment problems at the Material Recovery Facility. Loose bags wrap around the bearings and shafts of the material separator. The equipment must be stopped and the bags removed before they cause permanent damage. This results in slower production times for the sorting crew, as well as increased processing and repair costs.

6. Compostable plastic carryout bags, as currently manufactured, do not solve the problems of wildlife damage, litter, or resource use addressed by this ordinance. Compostable carryout bags are designed to remain intact until placed in a professional compost facility, so they do not degrade quickly as litter or in a marine environment. Producing compostable bags consumes nearly as much fossil fuel as noncompostable bags. Mixing compostable bags with regular plastic bags prevents recycling or composting either of them. Therefore, there is no exemption in this ordinance for compostable carryout bags.

7. Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the City of Capitola already offer reusable bags for sale at a price as low as 1.00 dollar.

8. Even though paper bags are recycled at a much higher rate within the City of Capitola than plastic bags, the purpose of this ordinance is to reduce all single-use bags. For this reason, a charge on paper bags is indicated as an incentive to reduce their use and encourage reusable bags.

9. Paper bags that contain a minimum of 40 percent post consumer recycled content have fewer negative impacts than virgin paper bags. Paper shopping bags with 40% post consumer recycled content are easily available, and such bags are in wide use by Capitola merchants.

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10. State law currently prohibits local jurisdictions from placing fees on single-use checkout plastic bags. Therefore, several California Cities have adopted or are pursuing a ban as the most effective remaining means to eliminate the impacts these plastic bags cause. State law does not prohibit jurisdictions from placing fees on paper bags.

8.07.020 Definitions.

A. For the purposes of this Chapter, the following definitions apply:

1. "Carryout bags" means bags provided by retailers to customers at the point of sale to hold customers' purchases. "Carryout bags" do not include bags used to contain loose items prior to checkout, such as meat, produce, and bulk goods, and does not include prepackaged products.

2. "Single-use plastic bag" or "single-use plastic carryout bag" means a single-use carryout bag of any size that is made from plastic and provided at the point of sale to customers by a retail establishment. Single-use plastic bags include both compostable and non-compostable carryout bags.

3. "Single-use paper bag" means a checkout bag provided by a retail establishment at the point of sale that is made from paper and is not a reusable bag.

4. "Recyclable" means material that can be sorted, cleansed, and reconstituted using the City's available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, converting, or otherwise destroying solid waste.

5. "Reusable bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, and meets the following requirements: 1) is either made of cloth or other washable woven fabric, or made of durable material including plastic that is at least 2.25 mils thick; 2) 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; 3) has a minimum volume of 15 liters; 4) is washable; and 5) does not contain lead, cadmium, or any other heavy metal in toxic amounts.

6. "Retail establishment" or "retail store" means all sales outlets, stores, shops, restaurants, vehicles, or other places of business located within the City of Capitola, which operate primarily to sell or convey goods, directly to the ultimate consumer.

7. Restaurants, means an establishment whose principal business is the sale of prepared food for consumption either on or off premises, are not covered under this ordinance.

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8. "Exempted uses" means those point-of-purchase or delivery sales, which have received a special exemption through the City Manager or the Managers designee, that allows the use of single-use bags.

8.07.030 Ban on plastic bags and store charge for single-use paper carryout bags.

A. No retail establishment shall provide plastic carryout bags to customers at the point of sale, except as permitted in this chapter.

B. No City of Capitola contractors, special events promoters, or their vendors, while performing under contract or permit shall provide plastic carry-out bags to customers at the point of sale.

C. Single-use paper carryout bags provided to customers shall contain a minimum of 40 percent post consumer recycled paper fiber, and be recyclable in the City of Capitola's curbside recycling program.

D. Retail establishments shall charge, during the first year of implementation of this ordinance, a fee that will be established by the City Council at the time of adoption of this ordinance, for each single-use paper carry out bag provided to customers at the point of sale. The City Council shall review the charge amount one year from the date of adoption to judge its effectiveness and at anytime thereafter as the City Council deems necessary. Notice of such fee shall be displayed in Retail establishments at a prominent location.

E. The charge imposed pursuant to this section shall not be applied to customers participating in the California Special Supplemental Food Program for Women, Infants, and Children, the State Department of Social Services Food Stamp program, or other government subsidized purchase programs for low-income residents.

F. The ban on single-use plastic bags and the charge on single-use paper bags shall not apply to restaurants, or to bags that are integral to the packaging of the product, or bags without handles provided to the Customer (i) to transport produce, bulk food, pharmacy products or meat from a department within a Retail Store to the point of sale, or (ii) to segregate food merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Single Use Paper Bag.

G. Retail establishments are strongly encouraged to make reusable bags available for sale to customers at a reasonable price.

H. Retail establishments shall indicate on the customer transaction receipt the number of carryout bags provided, and the total amount charged for those bags.

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8.07.040 Implementation.

A. Sixty days before this ordinance takes effect, the City of Capitola shall post, mail or deliver a copy of it to retail establishments within the city limits of the City of Capitola.

B. The City of Capitola will distribute to each store a reproducible placard designed to inform shoppers of the City of Capitola policy for carryout bags.

C. The City of Capitola Finance Department shall provide a copy of this ordinance to every new retail establishment that applies for a business license in the City of Capitola.

8.07.050 Exemptions allowing single use bags.

A. The City Manager, or the manager's designee, may exempt a retail establishment from the requirement set forth in Section 8.07.030 of this chapter for a one-year period upon the retail establishment showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the City Manager or the manager's designee's decision shall be final.

B. An exemption application shall include all information necessary for the City Manager or the manager's designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption.

C. The City Manager or managers' designee may approve the exemption application in whole or in part, with or without conditions.

8.07.060 Enforcement. Enforcement of this ordinance shall be as follows:

A. The City Manager, or designee, shall have primary responsibility for enforcement of this ordinance and shall have authority to issue citations for violation of this chapter. The City Manager, or designee, is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.

B. A person or entity violating or failing to comply with any of the requirements of this chapter shall be guilty of an infraction.

C. The City of Capitola may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.

D. The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.

E. The City Manager or designee may inspect any retail establishment's premises to verify compliance with this ordinance.

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8.07.070 Violations. Violations of this ordinance shall be enforced as follows:

A. Violation of this chapter is hereby declared to be a public nuisance. Any violation described in the preceding paragraph shall be subject to abatement by the City of Capitola, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.

B. Upon a first violation by a retail establishment, the City Manager, or designee, shall mail a written warning to the retail establishment. The warning shall recite the violation, and advise that future violations may result in fines.

C. Upon a second or subsequent violation by a retail establishment, the following penalties will apply:

1. A fine not exceeding one hundred dollars (\$100) for the first violation that occurs 30 days or more after the first warning.

2. A fine not exceeding two hundred dollars (\$200) for the second violation that occurs 60 days or more after the first warning.

3. A fine not exceeding five hundred dollars (\$500) for the third violation that occurs 90 days or more after the first warning.

4. A fine not exceeding five hundred dollars (\$500) for every 30 day period not in compliance, that occurs 90 days or more after the first warning.

D. Special events promoters and their vendors who violate this ordinance in connection with commercial or non-commercial special events shall be assessed fines as follows:

1. A fine not exceeding two hundred dollars (\$200) for an event of 1 to 200 persons.

2. A fine not exceeding four hundred dollars (\$400) for an event of 201 to 400 persons.

3. A fine not exceeding six hundred dollars (\$600) for an event of 401 to 600 persons.

4. A fine not exceeding one thousand dollars (\$1,000) for an event of 601 or more persons.

E. Remedies and fines under this section are cumulative.

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8.07.080 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City of Capitola hereby declares that it would have passed this title, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

8.07.090 Effective date.

This ordinance shall become effective three (3) months after the date of final passage by the City of Capitola City Council.

8.07.100 No conflict with Federal or State law.

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

8.07.110 Preemption.

The provisions of this chapter shall be null and void if State or Federal legislation, or administrative regulation, takes effect with the same or substantially similar provisions as contained in this chapter. The City Council shall determine whether or not identical or substantially similar statewide legislation has been enacted or regulations issued.”

Section 2. This ordinance shall be in force and take effect thirty (30) days after final adoption.

This ordinance was introduced on the 13th day of December, 2012, and was passed and adopted by the City Council of the City of Capitola on the 10th day of January, 2013, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

APPROVED:

Stephanie Harlan, Mayor

ATTEST:

_____, CMC
Susan Sneddon, City Clerk

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