

ORDINANCE NO. 655

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA,
CALIFORNIA, ESTABLISHING CHAPTER 8.51 OF THE CARPINTERIA
MUNICIPAL CODE PERTAINING TO THE REGULATION OF SINGLE-USE BAGS**

WHEREAS, the City of Carpinteria (“City”) pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste produced by the community (i.e., AB 939, AB 341, AB 32), and prevent storm water runoff, trash, and debris from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

WHEREAS, the State Legislature passed the Environmental Protection – Recycling – Plastic Carryout Bags Act (AB 2449) in 2007, with the stated intent of encouraging the use of reusable bags by consumers and retailers, and reducing the consumption of single-use bags state-wide; and

WHEREAS, the Carpinteria community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

WHEREAS, commercial establishments in Carpinteria distributed an estimated millions of single-use plastic bags and hundreds of thousands single-use paper bags in 2010; and

WHEREAS, most single-use paper and plastic bags are not recycled and so they end up in the waste stream or as litter in the environment. For example, the State of California estimates that 5 percent of single-use plastic bags distributed by commercial establishments subject to the At-Store Recycling Program (Pub. Res. Code § 42250-42257) are recycled through the Program and the EPA estimated that (nationally) approximately 50 percent of single-use paper shopping bags were recycled in 2009; and

WHEREAS, the City Council of the City of Carpinteria has held publicly noticed meetings on June 25, 2007, July 9, 2007, February 25, 2008, September 22, 2008, May 11, 2009, June 28, 2010, March 28, 2011, August 8, 2011, October 10, 2011, December 12, 2011, and February 27, 2012 and hosted community workshops on November 8, 2011 and February 1, 2012 in order to discuss issues and alternative responses to the use of single-use bags in the City; and

WHEREAS, the City Council received testimony and other information documenting the negative local and global impacts of single-use plastic bags on the environment and the waste stream; and

WHEREAS, the City larger stores and grocery stores cause the majority of single-use bag distribution in Carpinteria; and

WHEREAS, data gathered by City staff has documented the prevalence of single-use bags in the local environment, including in creeks and on beaches, and that many single-use bags are disposed of in the trash and sent to the landfill used by the City's trash hauler. These single-use bags negatively impact the local environment and create clean-up costs for the City, and are costly to dispose of and take up limited landfill space; and

WHEREAS, reusable bags are an available alternative to single-use bags; and

WHEREAS, in order to protect public health and safety and maintain and improve quality of life and the environment of Carpinteria, it is in the City's interest to establish programs and services that minimize the amount of single-use plastic and paper material that is manufactured and transported for use in Carpinteria, and which must then be handled, processed and disposed of; that minimize trash pollution in riparian, estuarine, ocean and other sensitive habitat areas; that minimize litter on public and private property: including but not limited to streets, beaches, parks, sidewalks, and storm drains; and, that reduce the amount of material in the Carpinteria waste stream.

NOW, THEREFORE, the City Council of the City of Carpinteria does hereby ordain as follows:

SECTION 1. INCORPORATION OF RECITALS

The City Council finds and determines that the above recitals are incorporated herein and are each relied upon independently by the City Council for its adoption of this Ordinance.

SECTION 2. CREATION OF CHAPTER 8.51

Chapter 8.51 of the Carpinteria Municipal Code shall hereby be created and shall read as follows:

8.51.010 Title.

The title of this chapter shall be "Single-Use Bag Regulations"

8.51.020 Purpose

The purpose of these provisions is to promote:

A. The protection of unique coastal resources found in Carpinteria and identified for protection in policies of the City's General Plan/Local Coastal Plan, including the Carpinteria "El Estero" Salt Marsh, Beaches, Tidelands, and Offshore Reefs, Harbor Seal Hauling Grounds, and Creekways and Riparian Habitat;

B. Compliance with federal and state mandates for Clean Water (including National Pollutant Discharge Elimination System Permit Program and waste stream reduction (AB 939 and AB 341));

C. A reduction in the amount of plastic and paper material that is manufactured, transported, handled/processed, and discarded, and the impacts associated with such activities.

D. A reduction in the amount of waste/debris in City parks, public open spaces, creeks, estuary, tidelands and the ocean, and the amount of material going to landfills;

8.51.030 Definitions.

The following definitions shall govern the construction of this chapter:

A. "Commercial Establishment" means any person, including any corporation, partnership, business, facility, vendor, organization or individual located in or doing business within the City of Carpinteria that sells or provides perishable or non-perishable goods.

B. "Large Commercial Establishment" is a commercial establishment with over \$5,000,000 in annual gross retail sales volume, as reported to the State Board of Equalization or is a grocery store as defined in this section.

C. "Small Commercial Establishment" is a food provider or a commercial establishment that does not qualify as a large commercial establishment. If a portion of a large commercial establishment qualifies as a food provider, that portion of the large commercial establishment shall qualify and be treated as a small commercial establishment under this chapter.

D. "Food Provider" means any person or establishment doing business within the City of Carpinteria, that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, restaurant, grocery store, delicatessen, or catering truck vehicle.

E. "Gift Bag" means a decorated bag capable of containing a volume no greater than 6 liters made largely of paper, with handles that is designed to be used as gift packaging .

F. "Grocery Store" means a commercial establishment greater than 500 square feet in area that sells a line of dry goods, canned goods, or non-food items and some perishable items.

G. "Point of Sale" means the location in the commercial establishment where purchase is made.

H. "Product Bag" means any bag provided to a customer within a commercial establishment for the purposes of transporting items to the point of sale. An illustrative list of product bags includes bags used to contain produce, vegetables, meat, prescription drugs, any bulk goods, as well as dry cleaning bags, newspaper bags, and prepackaged goods.

I. "Paper Bag" means any paper bag that has a post-consumer recycled content of at least 40 percent and is 100 percent recyclable.

J. "Reusable Bag" means any bag with handles that is specifically designed and manufactured for multiple reuse, has a minimum lifetime capability of 125 or more uses carrying 22 or more pounds over a distance of at least 175 feet, and is either (1) made of cloth or other machine washable fabric or (2) made of other durable material, including plastic that is at least 2.25 mils thick.

K. "Single-Use Bag" means any bag that is provided to customers for carryout purchases by a commercial establishment, excluding gift bags, product bags, and reusable bags, as defined in this section.

8.51.040 Prohibition and Reporting Requirement.

A. Commencing on July 11, 2012 large commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag.

B. Commencing on April 11, 2013 small commercial establishments are prohibited from dispensing to any customer at the point of sale a single-use bag, except gift bags or paper bags, as defined in this chapter.

8.51.050 Exemptions.

A. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and commercial establishments shall be exempt from the provisions of this chapter.

B. The City Manager, or his/her designee, may exempt an affected commercial establishment, from the requirements herein for a period of up to six months, upon showing by the commercial establishment that the application of the provisions herein would cause undue hardship. In determining whether undue hardship exists, the city manager or his/her designee shall consider:

1. Situations unique to the commercial establishment where there are no reasonable alternatives to using any bags that are not in compliance with this chapter and compliance with this chapter would cause significant economic hardship to that commercial establishment;

2. The existence of franchise or other contractual obligations which require a commercial establishment to use bags that are not in compliance with this chapter.

C. The decision of the City Manager or his/her designee to grant or deny an exemption shall be final. Exemptions granted under the provisions of this section are valid for up to six months, as determined by the City Manager. A commercial establishment granted an exemption by the City must re-apply prior to the end of the exemption period and demonstrate continued undue hardship, if it wishes to have the exemption extended. Extensions may only be granted for intervals not to exceed six months.

D. An exemption application shall include all information necessary for the City to make its decision, including but not limited to documentation showing the factual support for the claimed exemption.

E. Commercial Establishments must exercise best efforts during exemption period to meet ordinance requirements.

8.51.060 Penalties and Enforcement.

A. The presence at the point of sale of a non-exempt commercial establishment of prohibited bags not in compliance with this chapter shall constitute a rebuttable presumption of violation of this chapter.

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

1. For the first violation, upon a determination that a violation of this chapter has occurred, the City shall issue a written warning notice to the commercial establishment which will specify the violation and the appropriate penalties in the event of future violations.

2. Thereafter, any person violating or failing to comply with any of the requirements of this chapter shall be subject to remedies specified pursuant to Chapters 1.06 and 1.08 of this Code.

3. Each and every sale or other transfer of a single-use bag shall constitute a separate violation of this ordinance.

4. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

C. The remedies and penalties provided in this chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

8.51.070 Construction; Preemption

This chapter and any provisions thereof shall be null and void upon the adoption of any state or federal law or regulation imposing the same or essentially the same limits on the use of prohibited products as set forth in this chapter. This chapter is intended to be a proper exercise of the City's police power, to operate only upon its own facilities and commercial establishments acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

SECTION 3. CEQA FINDINGS.

The adoption of this Ordinance is not subject to the California Environmental Quality Act, as this ordinance does not constitute a project, as defined by Public Resources Code Section 21065 and even if it is determined that the proposed action constitutes a project, the project would be exempt pursuant to CEQA Guidelines §§ 15307 [exemptions for actions to protect natural resources], 15308 [exemptions for actions to protect the environment], or 15061(b)(3) [common sense exemption].

SECTION 4. EFFECTIVE DATE.

This Ordinance shall be in full force and effect thirty (30) days following a second reading of the ordinance; and before the expiration of fifteen (15) days of its passage shall be published once with the names of the City Council voting for and against the same in the Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or application thereof to any person or circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be declared unconstitutional or invalid or ineffective.

PASSED, APPROVED, AND ADOPTED this 12th day of March, 2012, by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Mayor of the City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held this 12th day of March, 2012.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

City Clerk, City of Carpinteria