

ORDINANCE NO. 1653

ORDINANCE OF THE CITY COUNCIL, OF THE CITY OF INDIO, CALIFORNIA, ADDING CHAPTER 103 TO THE INDIO MUNICIPAL CODE RELATING TO THE USE OF REUSABLE BAGS

WHEREAS, about nineteen billion (19,000,000,000) Single-Use Carryout Plastic Bags are used annually in California but less than 5% are recycled; and,

WHEREAS, about forty million (40,000,000) Single-Use Carryout Plastic Bags are distributed by establishments in the City each year; and,

WHEREAS, most of these single-use carryout bags are made from plastic or other material that does not readily decompose; and,

WHEREAS, numerous studies have documented the prevalence of Single-Use Carryout Plastic Bags littering the environment and blocking storm drains; in the Coachella Valley, Single-Use Carryout Plastic Bags create a litter problem which is aggravated by windy conditions here; and,

WHEREAS, the City taxpayers must bear the brunt of clean-up costs; and,

WHEREAS, this ordinance requires Stores that decide to make recycled paper carryout bags available to their customers to pass-through the reasonable cost of providing these bags; and,

WHEREAS, based on this analysis, the City has determined that a minimum cost pass-through of \$0.10 per paper bag would cover the reasonable cost to a Store of providing the paper bags to its customers; and,

WHEREAS, over 90 jurisdictions in California have approved ordinances that impose paper bag fees on the customers requesting these bags and these fees have proven very effective at generating a major shift in consumer behavior toward the use of Reusable Bags and significantly reducing bag consumption; and,

WHEREAS, the proceeds from the collection of the paper bag pass-through would be retained by the retailer and this ordinance does not specify how the retailers must expend the monies collected; and,

WHEREAS, customers can avoid this cost pass-through by using Reusable Bags; and,

WHEREAS, no portion of the cost pass-through will be provided to the City and consequently, the City will not receive any revenues from the retailers' collection of the paper bag cost pass-through; and,

WHEREAS, therefore, the cost pass-through is not a fee subject to Proposition 26; and,

WHEREAS, a paper bag cost pass-through is an essential element of the proposed ordinance as it is intended to provide a disincentive to customers to request paper bags when shopping at regulated Stores and to promote a shift towards the use of Reusable Bags by City of Indio consumers; and,

WHEREAS, the California Grocers Association, a non-profit trade association representing over 500 retail member companies, in an October 24, 2013 letter to the CVAG Executive Committee, has encouraged CVAG and its member jurisdictions to commit to a regional effort and move forward with an approach to regulate Single-Use Carryout Plastic Bags that includes placing a charge on recyclable paper bags; and,

WHEREAS, there are several alternatives to Single-Use Carryout Plastic Bags readily available in the City, including Reusable Bags produced from sustainable materials; and,

WHEREAS, an important goal of the City's environmental program is to procure and use sustainable products and services; and,

WHEREAS, it is the City's desire to lead by example and whenever possible to conserve resources, reduce the amount of greenhouse gas emissions and solid waste, and to protect the public health and welfare including local wildlife, all of which increase the quality of life for City of Indio residents and visitors.

THE CITY COUNCIL OF THE CITY OF INDIO DOES ORDAIN AS FOLLOWS:

Section 1. The City Council hereby specifically finds that all of the facts set forth in the recitals of this Ordinance are true and correct.

Section 2. A new Chapter 103 is hereby added to Title 9 of the Indio Municipal Code to read as follows:

**“Chapter 103
Reusable Bags**

Sections:

- 103.01 Findings and Purpose
- 103.02 Definitions
- 103.03 Single-Use Carryout Plastic Bags Prohibited
- 103.04 Permitted Bags
- 103.05 Carryout Bag Regulations
- 103.06 Exempt Customers
- 103.07 Operative Date
- 103.08 Penalties and Enforcement

103.01 Findings and Purpose

- A. The City Council of the City of Indio finds and determines that the City is committed to protecting the public health, safety, welfare, and environment, and that in order to meet these goals, it is necessary for the City to promote the public purposes served by this Chapter and adopt the following regulations pursuant to these findings.
- B. The City finds that ordinances limiting the use of Single-Use Carryout Plastic Bags have been proven to reduce the amount of pollution and improve quality of life for the citizens of Indio.
- C. The City finds that, except in unusual circumstances, it is feasible and reasonable for parties who provide Single-Use Carryout Plastic Bags to easily transition to paper bags and move to a model that charges for paper bag use by consumers.
- D. The City of Indio recognizes that Single-Use Carryout Plastic Bags are a public nuisance and affect public health and impact tourism and quality of life to both residents and visitors.

103.02 Definitions

- A. "Customer" means any Person obtaining goods from a Store.
- B. "Operator" means the Person in control of, or having the responsibility for, the operation of a Store, which may include, but not be limited to, the owner of the Store.
- C. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- D. "Pharmacy" means any retail store, where prescriptions, medications, controlled or over the counter drugs, personal care products or health supplement goods or vitamins are sold, but excluding any licensed Pharmacy located within a hospital.
- E. "Prepared Food" means foods or beverages which are prepared on the premises by cooking, chopping, slicing, mixing, freezing, or squeezing, and which require no further preparation to be consumed. Prepared Food does not include any raw, uncooked meat product or fruits or vegetables which are chopped, squeezed, or mixed.
- F. "Produce Bag" or "Product Bag" means any bag without handles used exclusively to carry produce, meats, or other food items to the point of sale inside

a store or to prevent such food items from coming into direct contact with other purchased items.

- G. "Recycled Paper Bag" means a paper bag provided to the Customer at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the establishment that contains no old growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is one hundred percent (100%) recyclable; and has printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of post-consumer recycled content. The Recycled Paper Bag is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Material (ASTM) Standard Specification for Compostable Plastics D6400, as published in September 2004.
- H. "Reusable Bag" means a bag that has handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: (1) is machine washable or is made of material that can be cleaned or disinfected; (2) has a minimum lifetime of one hundred twenty-five (125) uses, which for purposes of this subsection, means the capability of carrying a minimum of twenty-two (22) pounds one hundred twenty-five (125) times over a distance of at least one hundred seventy-five (175) feet; (3) if made of a plastic, it must be at least two and one-quarter (2.25) millimeter thick; (4) 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.
- I. "Single-Use Carryout Plastic Bag" means a bag other than a Reusable Bag provided to the Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the Store. Single-Use Carryout Plastic Bags do not include bags without handles provided to the Customer (1) to transport produce, bulk food, or meat from a produce, bulk food, or meat department within a Store to the point of sale; (2) to hold prescription medication dispensed from a Pharmacy; or (3) to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a Reusable Bag or Recycled Paper Bag.
- J. "Store" means any of the following retail establishments located within the City limits of the City of Indio:
- 1) A retail store with gross annual sales of two million dollars (\$2,000,000), or more, that sells a line of dry grocery, canned goods, or nonfood items and some perishable items;
 - 2) A store of at least 10,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to clothing, food, or personal items, and generates sales or use tax pursuant to the Bradley-Burns

Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code); or

- 3) A drug store, Pharmacy, supermarket, grocery store, convenience food store, foodmart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods, including those stores with a Type 20 or 21 license issued by the Department of Alcoholic Beverage Control; or
- 4) A store of less than 10,000 square feet of retail space that sells any perishable or non-perishable goods including, but not limited to, clothing, food, or personal items, and generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).

103.03 Single-Use Carryout Plastic Bags Prohibited

No Store shall provide to any Customer a Single-Use Carryout Plastic Bag. This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

103.04 Permitted Bags

All Stores shall provide or make available to a Customer only Recyclable Paper 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 Chapter. Nothing in this Chapter prohibits Customers from using bags of any type that they bring to the Store themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the Store.

103.05 Single-Use Carryout Plastic Bag Regulations

- A. No Person shall distribute a Single-Use Carryout Plastic Bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless otherwise provided in this Section.
- B. Single-Use Carryout Plastic Bags may be distributed to Customers by food providers for the purpose of safeguarding health and safety during the transportation of Prepared Foods and liquids intended for consumption away from the food provider's premises (i.e. take-out food).
- C. A Store shall make Recycled Paper Bags available to Customers for a minimum charge of ten cents (\$.10) per bag. The sale of each bag shall be separately itemized on the sale receipt.

- D. All Stores must keep records of the total number of Recycled Paper Bags provided, the total amount of monies collected for providing Recycled Paper Bags, and a summary of any efforts a Store has undertaken to promote the use of Reusable Bags by Customers in the prior calendar year. Such records must be made available to the City Manager or his/her designee, to review at any time. These records may be kept at the retailer's corporate office.

103.06 Exemptions

A Store may provide a Customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Section 2 of Division 106 of the Health and Safety Code; and a Customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the California Welfare and Institutions Code, with one (1) or more Recycled Paper Bags or Reusable Bags at no cost.

103.07 Operative Date

This Chapter shall become operative six (6) months after its effective date for Stores defined in Section 103.02(J)(1) and 103.02(J)(2). This Chapter shall become operative twelve (12) months after its effective date for Stores defined in Section 103.02(JL)(3) and 103.02(JL)(4).

103.08 Enforcement

- A. Any violation of this Chapter may be enforced by the City by criminal prosecution, civil action, administrative action or any other means authorized by law.
- B. Violations of this Chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors.
- C. The remedies provided in this Chapter are cumulative and in addition to any other remedies available by law or in equity. The City Attorney, City Prosecutor or duly authorized Enforcement Officer may pursue any other right and remedy permitted by the City's municipal code, including but limited to commencement of any civil action, the issuance of administrative fines and fees, or administrative action to abate as a public nuisance pursuant to Chapter 95A of this code.

Section 3. This ordinance has been environmentally reviewed pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq., hereafter the "Guidelines"). The City Council finds that the adoption of this ordinance is exempt from CEQA pursuant to the following Guidelines: Section 15061(b)(3), Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources-Class 7), and

Section 15308 (Actions by Regulatory Agencies for Protection of the Environment Class 8). This ordinance constitutes a regulatory action of the City Council to assure the maintenance, restoration, or enhancement of a natural resource involving protection of the environment because it will minimize impacts associated with Single-Use Carryout Plastic Bags on the environment of the City and region. Therefore the project is found and determined to be exempt from CEQA pursuant to State CEQA Guidelines Section 15307. Further, this ordinance is a regulatory action of the City Council to assure the maintenance, restoration, enhancement and/or protection of the environment, which does not involve any construction activity or relaxation of any standards allowing environmental degradation. Therefore, as a separate and independent basis, the project also is found exempt from CEQA pursuant to CEQA Guidelines Section 15308. The findings and determinations on exemption from CEQA are, in part, based on the following:

1. This ordinance will reduce Single-Use Carryout Plastic Bags within the City of Indio, thereby reducing the existing and future impacts of plastic bag litter including, but not limited to, the adverse aesthetic impacts of plastic bag litter.
2. This ordinance will not alter any construction, land use, or development activities and therefore will not degrade the existing environmental quality for wildlife, plants or humans in the City.
3. It is determined with certainty that this ordinance has no possibility that the use of Reusable Bags, the prohibition of Single-Use Carryout Plastic Bags, and establishment of a paper bag pass through fee will have a significant effect on the environment.
4. This ordinance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements within the City.
5. This ordinance will further assure the maintenance, restoration, and/or enhancement of natural resources in the City and region by reducing the amount of potential litter and debris that can affect the biological, botanical, and environmental resources.
6. This ordinance will further assure the maintenance, restoration, enhancement, and/or protection of the environment by reducing trash in the waste stream by encouraging the use of Reusable Bags.

Section 4. Severability. 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 by a court of competent jurisdiction, 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 declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted in the manner prescribed by law.

Section 6. This ordinance shall be in full force and effect thirty (30) days after its adoption ("effective date").

PASSED, APPROVED AND ADOPTED this 15th day of May, 2014, by the following vote:

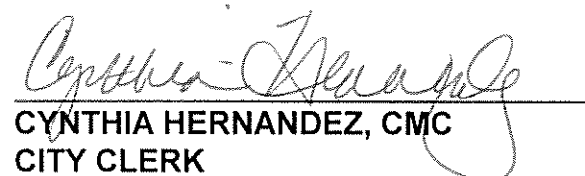
AYES: Holmes, Miller, Torres, Wilson

NOES: Ramos Watson



MICHAEL H. WILSON, MAYOR

ATTEST:



**CYNTHIA HERNANDEZ, CMC
CITY CLERK**