

ORDINANCE NO. 1561

AN ORDINANCE OF THE CITY OF LAGUNA BEACH ADDING CHAPTER 7.21 "DISPOSABLE BAG REDUCTION" TO THE LAGUNA BEACH MUNICIPAL CODE PROHIBITING RETAIL ESTABLISHMENTS FROM PROVIDING SINGLE-USE CARRYOUT BAGS AND REGULATING THE DISTRIBUTION OF PAPER CARRYOUT BAGS, AND ADOPTING A NEGATIVE DECLARATION THEREFOR

WHEREAS, the City of Laguna Beach has a strong interest in encouraging the conservation of resources, reducing beach litter and marine pollution, and protecting local wildlife, all of which increase the quality of life of and promote the health and welfare of Laguna Beach residents and visitors; and

WHEREAS, an estimated nineteen billion single-use bags are used annually in retail establishments in California, but less than 5 percent of those single-use bags are recycled; and

WHEREAS, there are approximately 400 retail establishments in the City, many of which distribute single-use, disposable carryout bags to their customers; and

WHEREAS, many of the local commercial and retail establishments use single-use carryout bags made from plastic or other materials that do not readily decompose; and

WHEREAS, the litter problem resulting from plastic bags is becoming increasingly difficult to manage and has costly negative implications for tourism and the local economy, wildlife, aesthetics, and the marine environment; and

WHEREAS, numerous studies have documented the prevalence of single-use, carryout bags littering the environment, blocking storm drains and fouling beaches; and

WHEREAS, plastic bags are a significant source of marine debris and are hazardous to marine animals and birds that often confuse single-use, plastic carryout bags as a source of food. The ingestion of these bags can result in reduced nutrient absorption and death to birds and marine animals; and

WHEREAS, the Pacific Ocean contains a huge accumulation of debris known as the "Great Pacific Garbage Patch," which consists mostly of plastic debris. Some scientists estimate the density of plastic in this garbage patch as one million pieces of plastic per square mile. While plastic does not biodegrade it does "photodegrade," breaking down into smaller pieces that can make their way into the food chain via such animals as jellyfish.

WHEREAS, because there is a strong possibility that plastic bags discarded in the City can end up in the ocean where they will last indefinitely and create an aesthetic blight and potential hazard to marine life (and paper bags will not do so because they biodegrade and are less likely to be blown out to sea), it is in the best interests of the public health, safety and welfare to adopt the proposed ban on distribution of single-use plastic bags at the point of sale within the City.

WHEREAS, although single-use paper bags are more environmentally friendly than single-use plastic bags, the manufacturing, transport, recycling and/or disposal of paper bags require significant environmental resources; and

WHEREAS, from an overall environmental and economic perspective, the City believes that the best alternative to the continued use of single-use paper and plastic carryout bags is a major shift to using reusable bags; and

WHEREAS, other jurisdictions have required retail establishments to impose a paper bag cost pass-through on customers that are provided paper bags, and these cost pass-

throughs have been effective in generating a major shift in consumer behavior toward the use of reusable bags and in significantly reducing single-use paper bag distribution and use; and

WHEREAS, this Ordinance requires grocery stores and pharmacies that provide paper bags to customers to pass-through the reasonable cost of providing those bags to customers; and

WHEREAS, this Ordinance allows customers to avoid this cost pass-through by using their own reusable bags; and

WHEREAS, the cost pass-through is not a fee subject to Proposition 26 because the monetary proceeds from the collection of the paper bag cost pass-through will be retained by the retail establishments and this Ordinance does not specify how the retailers must expend the monies collected; and

WHEREAS, a paper bag cost pass-through is an essential element of this Ordinance because it is intended to provide a disincentive to consumers to request paper bags when shopping at regulated stores and to encourage a shift towards the use of reusable bags; and

WHEREAS, there are several alternatives to single-use carryout bags available, including reusable bags produced from sustainable materials; and

WHEREAS, because the proposed Ordinance is not an activity that will result in an adverse physical change in the environment, it does not qualify as a "project" under section 21065 of the Public Resources Code, and accordingly, is not subject to the California Environmental Quality Act (Pub. Res. Code §§ 21000–21177) ("CEQA"); and

WHEREAS, even if the proposed Ordinance qualified as a “project” under section 21065 of the Public Resources Code, the project would be exempt from CEQA because (1) it is an activity undertaken “to assure the maintenance, restoration, enhancement and protection of the environment” (14 C.C.R. § 15308), and/or (2) “it can be seen with certainty that there is no possibility that the activity in question may have a significant [adverse] effect on the environment” (14 C.C.R. § 15061(b)(3)); and

WHEREAS, even though not required by CEQA under the circumstances, the City has prepared an Initial Study concerning the proposed Ordinance, and based upon this study, the City has determined that the proposed Ordinance is not an activity that will have a significant adverse effect on the environment; and

WHEREAS, because the proposed Ordinance is not an activity that will have a significant adverse effect on the environment, the City has prepared a Negative Declaration pursuant to section 21080(c) of the Public Resources Code; and

WHEREAS, the Initial Study and the Negative Declaration were circulated for public review from December 29, 2011 through January 20, 2012, and public notice of the intent to adopt the Negative Declaration has been provided as required by the State and Local CEQA Guidelines, and

WHEREAS, the City Council hereby adopts the Negative Declaration pursuant to the provisions of CEQA.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH HEREBY ORDAINS as follows:

SECTION 1. The above recitations are true and correct and incorporated herein by reference.

SECTION 2. Chapter 7.21 is hereby added to the Laguna Beach Municipal Code to read as follows:

CHAPTER 7.21 DISPOSABLE BAG REDUCTION

Sections:

- 7.21.010 Definitions**
- 7.21.020 Prohibition on the Distribution of Single-Use Plastic Carryout Bags**
- 7.21.030 Regulation of the Distribution of Recycled Paper Carryout Bags**
- 7.21.040 Exemptions**
- 7.21.050 Enforcement & Notice of Violation**
- 7.21.060 Administrative Remedies**
- 7.21.070 No Conflict with Federal or State Law**

7.21.010 Definitions

“Carryout bag” means any bag that is provided by a retail establishment at the point of sale to a customer for use to transport or carry away purchases, such as merchandise, goods, or food, from the retail establishment. Carryout bags do not include product bags as defined in this chapter.

“Grocery store” means any retail establishment that sells groceries, fresh, packaged, canned, dry, prepared or frozen food or beverage products and similar items, and includes, without limitation, supermarkets, convenience stores, liquor stores and gasoline station stores.

“Pharmacy” means any retail establishment, 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.

“Product bag” means any bag provided to a customer for use within a retail establishment to assist in the collection or transport of products to the point-of-sale within the retail establishment, or to protect a purchased item from damaging or contaminating other purchased items when placed together in a recycled paper bag or reusable bag.

“Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale for the purpose of transporting food and merchandise out of the grocery store and that meets the following standards: contains no old-growth fiber and a minimum of forty percent (40%) post-consumer recycled content; is 100% recyclable; and has printed in a highly visible manner on the outside of the bag the words “reusable” and “recyclable,” the name of the and location of the (country) of the manufacturer, and the percentage of post-consumer recycled content.

“Recycled paper bag cost pass-through” means the cost that this chapter requires grocery stores and pharmacies to collect from their customers whenever a paper bag is provided to a customer.

“Retail establishment” means any person, including a corporation, partnership, business, facility, vendor, organization or individual, that sells or provides merchandise, goods or materials, including, without limitation, clothing, food, or personal item of any kind, directly to a consumer. Retail establishment includes, without limitation, any grocery store, department store, hardware store, pharmacy, liquor store, convenience store, outdoor farmers’ market, and any other retail store or vendor. Retail establishment does not include restaurants, catering trucks, mobile food trucks, and other similar food establishments.

“Reusable bag” means a bag with handles that is specially designed and manufactured for reuse and meets all of the following requirements:

- (1) Minimum lifetime of one hundred and twenty-five (125) uses and the capability of carrying a minimum of twenty-two (22) pounds one-hundred and twenty-five (125) times over a distance of at least one-hundred and seventy-five (175) feet;
- (2) Minimum volume of fifteen (15) liters;
- (3) Machine washable or made from a material that can be cleaned or disinfected;
- (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;
- (5) Printed on the bag or tag: the name of the manufacturer; location where the bag is manufactured; statement bag does not contain lead, cadmium, or any other heavy metal in toxic amounts; and the percentage of post-consumer recycle material used, if any; and
- (6) If made of plastic, is a minimum of at least 2.25 mil thick.

“Single-use, plastic carryout bag” means any bag less than 2.25 mil thick and made predominately of plastic derived from petroleum or bio-based sources, such as corn or other plant source, and includes compostable, non-compostable, and biodegradable plastic bags.

7.21.020 Prohibition on the Distribution of Single-Use Plastic Carryout Bags

(A) No retail establishment in the City shall provide a single-use, plastic carryout bag to a person except as otherwise permitted by this chapter.

(B) Grocery stores and pharmacies in the City shall not provide any type of carryout bag to a person at the point of sale unless it is a reusable bag or a recycled paper bag being provided pursuant to the terms of this chapter.

(C) No person shall distribute a single-use, plastic carryout bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event except as otherwise else permitted by this chapter.

(D) Nothing in this chapter is intended to prohibit the distribution of product bags.

7.21.030 Regulation of the Distribution of Recycled Paper Carryout Bags

(A) Subject to subsection (B) of this section, a grocery store or pharmacy may only provide a recycled paper bag to a person if it collects a recycled paper bag cost pass-through from the person for each recycled paper bag provided. All monies collected by the grocery store or pharmacy pursuant to this section will be retained by the store or pharmacy.

(B) The recycled paper bag cost pass-through shall not be less than 10 cents, unless a grocery store or pharmacy has previously submitted a full accounting to the City, signed by a responsible manager under penalty of perjury that identifies all costs of providing paper bags, including bag purchase, shipping, handling, and storage, showing a lesser actual cost to the store or pharmacy for each paper carryout bag. Any such accounting shall expire one year from the date of original submission and a new accounting must be submitted upon expiration in order for the grocery store or pharmacy to continue collecting a recycled paper bag cost pass-through of less than 10 cents.

(C) No grocery store or pharmacy issuing a recycled paper bag cost pass-through pursuant to this section shall rebate or otherwise reimburse a person for any portion of the cost pass-through.

(D) All grocery stores and pharmacies shall indicate on the customer transaction receipts the number of recycled paper bags provided and the total amount of the recycled paper bag cost pass-through.

7.21.040 Exemptions

(A) The City Manager, or his or her designee, may exempt a retail establishment from the requirements of this chapter for up to a one-year period upon a showing by the retail establishment that the conditions of this chapter would cause undue hardship. An undue hardship shall only be found if:

- (1) Circumstances or situations unique to the particular retail establishment are such that there are no reasonable alternatives to single-use, plastic carryout bags or a recycled paper bag cost pass-through charge; or
- (2) Circumstances or situations unique to the retail establishment are such that compliance with the requirements of this Chapter would deprive a person of a legally protected right.

(B) If a retail establishment requires an exemption beyond the initial exemption period, the retail establishment must re-apply prior to the end of the exemption period and must demonstrate continued undue hardship if it wishes to have the

exemption extended. Extensions may only be granted for intervals not to exceed one year.

(C) 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. The City Manager or his or her designee may require the applicant to provide additional information to permit the City to determine facts regarding the exemption application.

(D) The City Manager, or his or her designee, may approve the exemption application, in whole or in part, with or without conditions.

(E) Exemption decisions are effective immediately, are final, and are not appealable.

(F) The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

7.21.050 Enforcement and Notice of Violation

(A) The City Manager, or his/her designee, shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of any provision of this chapter. The City Manager, or his/her designee, may establish regulations or administrative procedures and take any and all actions reasonable and necessary to further the purposes of this chapter or to obtain compliance with this chapter, including, without limitation, performing an inspection in accordance with applicable law of a retail establishment's premises to verify compliance with this chapter.

(B) Any violation of any of the requirements of this chapter, or of any regulation or administrative procedure authorized pursuant to this chapter shall constitute an infraction. Each and every day that a violation occurs shall constitute a separate violation.

(C) The remedies and penalties provided in this chapter are cumulative and not exclusive, and nothing in this chapter shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure developed pursuant hereto.

7.21.060 Administrative Remedies.

(A) Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

(B) Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

(C) Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines, which shall be cumulative with each day that a violation occurs constituting a separate violation:

- (1) A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
- (2) A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.
- (3) A fine not exceeding five hundred (\$500) for the third and any subsequent violation that occurs following the issuance of a warning notice.

(D) Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.15, Administrative Citations, of this code, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

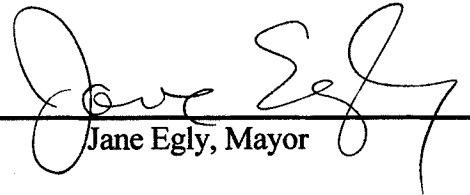
7.21.070 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional. To this end, the provisions of this Ordinance are declared severable.

SECTION 4: Effective Date. This Ordinance shall become effective January 1, 2013. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

ADOPTED this 28th day of February, 2012.



Jane Egly, Mayor

ATTEST:




Martha Anderson, City Clerk

I, Martha Anderson, City Clerk of the City of Laguna Beach, do hereby certify that the foregoing Ordinance No. 1561 was introduced at a regular meeting of the City Council on February 7, 2012 was finally adopted at a regular meeting of the City Council of said City held on February 28, 2012 by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Iseman, Pearson, Rollinger, Egly

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None



City Clerk of the City of Laguna Beach