

ORDINANCE NO. _____

**ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADDING
CHAPTER 9.41 OF TITLE 9 OF THE MENDOCINO COUNTY CODE ENTITLED
"SINGLE-USE CARRYOUT BAGS BY RETAIL ESTABLISHMENTS"**

The Board of Supervisors of the County of Mendocino ordains as follows:

Chapter 9.41 of Title 9 of the Mendocino County Code is added to read as follows:

"SINGLE-USE CARRYOUT BAGS BY RETAIL ESTABLISHMENTS"

Section 9.41.010 Findings.

- (A) The use of all single-use shopping bags (plastic, paper, biodegradable) has severe environmental impacts, including greenhouse gas (GHG) emissions, litter, harm to wildlife, water consumption and solid waste generation.
- (B) There are retail establishments in the County of Mendocino ("County") which provide single-use, disposable carryout bags to their Customers.
- (C) Many of these single-use carryout bags are made from plastic or other material that does not readily decompose.
- (D) Billions of single-use plastic bags are used annually in California but only a small percentage are recycled.
- (E) Studies have documented the prevalence of single-use plastic carryout bags littering the environment, blocking storm drains and fouling beaches.
- (F) The County's taxpayers must incur clean-up costs of this litter.
- (G) Plastic bags are a source of marine debris and are hazardous to marine animals and birds which confuse plastic fragments for a source of food resulting in injury and death to birds and marine animals.
- (H) Of all single-use bags, single-use plastic bags have the greatest litter impacts.
- (I) The use of single-use paper bags result in greenhouse gas emissions, atmospheric acidification, water consumption, and ozone production.
- (J) From an overall environmental and economic perspective, the best alternative to single-use plastic and paper carryout bags is a shift to reusable bags.
- (K) There are alternatives to single-use carryout bags which are readily available.

- (L) An important goal of the County is to procure and use sustainable products and services.
- (M) The County recognizes carryout bag regulation is a matter of statewide interest and concern that is best applied uniformly throughout the state; however in the absence of statewide regulation, the County finds that it is in the best interest of the County and its residents to regulate carryout bags as described herein.
- (N) It is the desire of County to conserve resources, reduce the amount of waste, litter and marine pollution that are attributable to the use of single-use bags, and to protect the public health and welfare as well as to protect wildlife, all of which activities increase the quality of life for the County residents and visitors.
- (O) Studies document that banning plastic bags and placing fees on paper bags will dramatically reduce the use of both types of bags.
- (P) The Board of Supervisors finds that it will discourage the use of single-use paper bags and encourage the use of reusable carryout bags if a store is required to charge Customer who uses the single-use paper bag for the cost of the bag rather than spreading that cost among all of its customers by including the cost in the prices charged for its merchandise. This ordinance provides for such a charge solely for this reason and not to raise revenue for a general or special purpose of the County.

Section 9.41.020 Definitions.

For the purpose of this chapter, the following definitions shall apply to the capitalized terms unless the context clearly indicates or requires a different meaning.

“Customer” means any person obtaining goods from a store.

“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.

“Public Eating Establishment” means a restaurant, take-out food establishment, or any other business that receives 90% or more of its revenue from the sale of Prepared Food, including alcoholic beverages, to be eaten on or off its premises.

“Post Consumer Recycled Content” means material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Post Consumer Recycled Content does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

“Recycled-Content Paper Bag” means a paper carryout bag provided by a store to a Customer at the point of purchase that meets all of the following requirements:

- (1) Contains a minimum of 40 percent post consumer recycled content, except a 350 cubic inch or smaller recycled-content paper bag shall contain a minimum of 20 percent post consumer recycled content.
- (2) Is accepted for recycling in the curbside program of the County.
- (3) Has printed on the bag the name of the manufacturer and the minimum percentage of post consumer content.

“Reusable Carryout Bag” means a bag with handles that is specifically designed and manufactured for multiple reuse, does not contain lead, cadmium, or any other heavy metal in toxic amounts as established by the United States Pharmacopeia Convention (USP), and is either:

- (1) Made of cloth or other machine washable fabric, or
- (2) Made of durable plastic that is at least 2.25 mils thick and is specifically designed for multiple reuse, meaning manufactured to carry a minimum of 22 pounds for at least 125 times over a distance of at least 175 feet.

“Single-Use Carryout Bag” means a bag made of plastic, paper, or other material, that is provided by a store to a Customer at the point of purchase and that is not a Reusable Carryout Bag. A Single-Use Carryout Bag does not include (1) a bag provided by a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Cal. Business and Professions Code to a Customer purchasing a prescription medication; (2) a bag used by Customers before the point of purchase to (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items; (b) contain or wrap frozen foods, meat, or fish, whether prepackaged or not; (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem; (d) contain unwrapped prepared foods or bakery goods; or (e) separate or protect individual items prior to placing them in a carryout bag; or (3) a newspaper bag, door-hanger bag, laundry-cleaning bag, or bag sold in a multiple package of bags intended for use as garbage, pet waste, or yard waste bags.

“Store” means a retail establishment, other than a Certified Farmer’s Market, that sells perishable or nonperishable goods, licensed to do business in the County, except Public Eating Establishments.

Section 9.41.030 Carryout Bag Regulations.

- (A) A Store shall not provide a Single-Use Carryout Bag to a Customer at the point of purchase, except as provided in this section.
- (B) Plastic Single-Use Carryout Bags are prohibited.

- (C) A Store may provide Reusable Carryout Bags to Customers at no cost, until 18 months after the Effective Date of this ordinance, only when combined with a time-limited store promotional program to promote the use of Reusable Carryout Bags.
- (D) A Store may provide to a Customer a Recycled-Content Paper Bag or a Reusable Carryout Bag upon request but shall charge the Customer, except as provided in subdivision (F), not less than 10 cents per bag.
- (E) A Store will not be required to charge a customer for a Recycled-Content Paper Bag of less than 250 cubic inches capacity.
- (F) For any Recycled-Content Paper Bag or a Reusable Carryout Bag sold to a Customer, the amount of the sale of the bag shall be separately itemized on the sales receipt. No store shall rebate or otherwise reimburse a Customer any portion of the charge required for a Recycled-Content Paper Bag.

Section 9.41.040 Application to Different Classes of Stores.

This Ordinance shall be and the same is hereby declared to be in full force and effect for different classes of Stores as follows:

- (A) From and after one hundred and eighty (180) days from the Effective Date for:
 - (1) A full-line, self-service retail Store with gross annual sales of three million dollars (\$3,000,000) or more and which sells a line of dry grocery, canned goods, nonfood items and some perishable items; and
 - (2) A Store with over 10,000 square feet of retail space that 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 Tax Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.
- (B) From and after five hundred and forty-five (545) days from the Effective Date for all other Stores.

Section 9.41.050 Violations and Penalties.

- (A) Any action to enforce this Ordinance must be preceded by delivery of a written warning to the Store where a violation has occurred. The warning shall be personally delivered to the Store manager or mailed by registered or certified U.S. Mail to the Store. No further enforcement action may be taken against the Store for that violation, if the Store cures the violation within thirty (30) days after receipt of the written warning and

- (B) Any person, firm or corporation who violates this Ordinance shall be guilty of an infraction, and upon conviction thereof, shall be punished by fine not exceeding (1) \$100.00 for a first violation, (2) \$200.00 for a second violation within the same year, and (3) \$500.00 for each additional violation within the same year.
- (C) Any violation of this Chapter may be enforced through any applicable administrative enforcement procedures contained in the Mendocino County Code. The Chief Executive Officer, or his or her designee, is authorized to take any and all other actions authorized by law which are reasonable and necessary to enforce this Chapter, including, but not limited to, investigating violations, and imposing administrative fines in amounts as may be established from time to time by ordinance.
- (D) In addition to the administrative enforcement procedures described above, the County Counsel is authorized to pursue judicial enforcement of this Chapter through a civil action.
- (E) A violation of any provision of this Ordinance by any person, firm or corporation shall be subject to a civil action in any court of competent jurisdiction, including the small claims court, by a customer, public interest organization, or the County to recover any damages caused by the violation and a civil penalty of \$1,000 or 10% of actual damages, whichever is higher, for every such violation. For any willful violation, the Customer, public interest organization or County may recover treble damages. Nothing in this subsection shall prohibit the filing of an action as authorized herein as a class action. The prevailing party in any action filed pursuant to this subsection shall be entitled to recover its reasonable attorneys' fees to be determined by the court.
- (F) No remedy contained in this section is intended to be exclusive of any other remedy contained herein and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise.

Section 9.41.060 Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors of the County of Mendocino hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 9.41.070 Publication.

The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law.

Section 9.41.080 Effective Date.

The Ordinance codified in this Chapter shall take effect thirty (30) days after passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2012, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
JEANINE B. NADEL, County Counsel

JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy