

CITY OF OJAI

ORDINANCE NO. 817

*AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF OJAI, CALIFORNIA
ADDING A NEW CHAPTER 13, ENTITLED
"SINGLE-USE CARRYOUT BAGS,"
TO TITLE 5 OF THE OJAI MUNICIPAL CODE*

WHEREAS, Ojai is a community with a very special environment, both natural and manmade, and the qualities of both must be respected so the uniqueness of Ojai can flourish; and

WHEREAS, Ojai's environment is in part a reason it is a tourist destination and therefore needs to be protected; and

WHEREAS, policies within the General Plan's Open Space Element recognize the need to protect the scenic, aesthetic, and visual character of the community; and

WHEREAS, numerous studies have documented the prevalence of single use plastic carryout bags littering the environment, blocking storm drains, and coastal waterways. Further plastic bags are a significant source of marine debris and hazardous to marine animals and birds which often confuse plastic bags for a source of food; and

WHEREAS, from an overall environmental and economic perspective, the best alternative to single-use plastic carryout bags is a major shift to reusable bags, which is encouraged through the grocery store collection of a recyclable paper bag cost pass-through. 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 pass-through, and therefore, the cost pass-through is not a fee subject to Proposition 26; and

WHEREAS, it is desirable to the City whenever possible to conserve resources and reduce the amount of greenhouse gas emissions, waste, litter, pollution and to protect the public health and welfare including local wildlife, all of which increases the sustainability and quality of life for Ojai's residents and visitors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Environmental Determination. The City Council has read and considered the Negative Declaration, published January 20, 2012 together with any comments received and considered during the 30-day public review period (January 23 to February 21, 2012). The Negative Declaration has been prepared in compliance with CEQA, and is adequate for this proposal. No significant impacts to the environment have been identified that need mitigation. The City Council finds that no substantial evidence has been presented, and that the project will not have a significant adverse effect on the environment. The Negative Declaration is in the custody of the City of Ojai Community Development Department, located at Ojai City Hall, 401 South Ventura Street, Ojai, CA 93023.

SECTION 2. Chapter 13 is hereby added to Title 5 of the Ojai Municipal Code to read as follows:

CHAPTER 13. SINGLE-USE CARRYOUT BAGS

Sec. 5-13.101. Definitions.

For purposes of this chapter, the following words or phrases shall have the meanings ascribed to them by this chapter:

(a) '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.

(b) 'Restaurant' means any establishment in the City of Ojai that provides prepared food for public consumption on or off its premises and includes, without limitation, any store, shop, sales outlet, grocery store, or delicatessen.

(c) '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 stations.

(d) 'Paper bag pass-through' means the cost which must be collected by retailers from their customers when providing a recyclable paper bag.

(e) '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, such as those distributed in the produce or meat section.

(f) 'Recyclable paper bag' means a paper carryout bag provided by a retail establishment to a customer at the point of sale that meets the following requirement:

- (1) The paper carryout bag is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the City.

(g) 'Retail establishment' means any person, including any corporation, partnership, business, facility, vendor, organization or individual that sells or provides merchandise, goods or materials, including, without limitation, clothing, food or personal items of any kind directly to a customer. Retail establishment includes, without limitation, grocery store, department store, hardware store, pharmacy, convenience and liquor stores and any other retail store or vendor.

(h) 'Reusable bag' means a bag with handles that is specifically designed and manufactured for multiple reuse and is either (1) made of cloth or other washable material capable of being cleaned and disinfected, and/or (2) made of durable plastic that is at least two and one-quarter (2.25) mils thick and is suitable for reuse.

(i) 'Single-use plastic carryout bag' means any bag that is less than 2.25 mils thick and is made predominately of plastic derived from petroleum or from bio-based sources, such as corn or other plant sources.

Sec. 5-13.102. Prohibitions.

(a) No retail establishment in the City shall provide a single-use plastic bag to a customer unless otherwise permitted pursuant to Section 5-13.104.

(b) No grocery store in the City shall provide any type of carryout bag to a customer at the point of sale except a reusable bag or a recyclable paper bag unless otherwise permitted pursuant to Section 5-13.104.

(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 unless otherwise permitted pursuant to Section 5-13.104.

Sec. 5-13.103. Recyclable Paper Bags Cost Pass-Through.

(a) Subject to subsection (b) of this Section, a grocery store may only provide a recyclable paper bag to a customer if it collects a paper bag cost pass-through from the customer for each recyclable paper bag provided.

(b) The paper bag cost pass-through shall be ten cents (10¢).

(c) No grocery store collecting a paper bag pass-through pursuant to this Section shall rebate or otherwise reimburse a customer for any portion of this pass-through.

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

(e) On an annual basis or as otherwise may be required by the Community Development Director, or designee, each grocery store required to collect a paper bag pass-through shall report to the City, on a form approved by City Council. All moneys collected by the grocery store will be retained by the grocery store.

Sec. 5-13.104. Exemptions.

(a) Notwithstanding the prohibitions contained in Section 5-13.102:

- (1) Single-use paper or plastic carryout bags may be distributed without charge by restaurants for the transportation of food or beverages that are provided to customers for consumption on the premises, for take-out or by delivery.
- (2) Retail establishments may distribute product bags and may make reusable bags available to customers whether through sale or otherwise.

(b) Notwithstanding the requirements contained in Section 5-13.103, a store may provide a reusable bag or a recyclable paper bag at no cost at the point of sale to 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 Part 2 of Division 106 of the California Health and Safety Code and/or 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.

(c) The City Manager, or designee, including the Community Development Director, may exempt a retail establishment from the requirements of this chapter for up to a one (1)-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 in:

- (1) Circumstances or situations unique to the retail establishment such that there are no reasonable alternatives to single-use plastic carryout bags or a paper bag pass-through cannot be collected; or
- (2) Circumstances or situations unique to the retail establishment such that compliance with the requirements of this chapter would deprive a person of a legally protected right.

(d) 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 (1) year.

(e) 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 designee, may require the applicant to provide additional information to permit the City to determine facts regarding the exemption application.

(f) The City Manager, or designee, may approve the exemption application, in whole or in part, with such conditions necessary to ensure furtherance of the purposes of this ordinance.

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

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

Sec. 5-13.105 Remedies.

(a) The City Council is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting any retail establishment's premises to verify compliance.

(b) Any person violating this Section shall be guilty of an infraction which shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or a misdemeanor which shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the County Jail for a period not exceeding six (6) months or by both such fine and imprisonment..

(c) The City Attorney may seek legal, injunctive or other equitable relief to enforce this chapter.

(d) Administrative enforcement of this chapter shall proceed pursuant to the City's Municipal Code Chapter 6 of Title 1 with the fines to be graduated for repeated violations in amounts set forth by City Council resolution.

(e) The remedies and penalties provided in this Section are cumulative and not exclusive and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.

(f) Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this Section."

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 4. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the Ojai Valley News, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 5. This Ordinance shall be operative on July 1, 2012.

SECTION 6. This Ordinance shall become effective on the thirty-first (31) day after its passage.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012.

CITY OF OJAI

Betsy Clapp, Mayor

ATTEST:

Rhonda K. Basore, City Clerk

APPROVED AS TO FORM:

Joseph W. Fletcher, City Attorney