



ORDINANCE NO. (ID # 1133)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA
ORDINANCE OF THE CITY COUNCIL OF PACIFICA ADDING
ARTICLE 5 OF CHAPTER 5 OF TITLE 6 OF THE CITY OF
PACIFICA MUNICIPAL CODE REGARDING REUSABLE BAGS**

WHEREAS, single-use carryout bags constitute a high percentage of litter, which is unsightly, costly to clean up, and causes serious negative environmental impacts; and

WHEREAS, the City has a substantial interest in protecting its residents and the environment from negative impacts from plastic carryout bags; and

WHEREAS, on October 23, 2012 the San Mateo County Board of Supervisors approved an Environmental Impact Report ("EIR") and adopted an ordinance banning single-use carryout bags from stores, while requiring stores that provide reusable bags to charge customers ten cents (\$.10) per bag; and

WHEREAS, County's ordinance encouraged cities within and neighboring the County to adopt similar ordinances and the County's EIR specifically analyzed the possibility of 24 cities (18 cities within San Mateo County and 6 cities in Santa Clara County) adopting the County's ordinance within their own jurisdictions; and

WHEREAS, the City intends this Ordinance to fall within the scope of the County's EIR and has therefore modeled this Ordinance on the County's ordinance.

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

SECTION 1. MUNICIPAL CODE AMENDMENT. Chapter 6-5.500 "Reusable Bags" is hereby added as follows:

5.501 Findings and purpose

The City Council finds and determines that:

- (a) The use of single-use carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.
- (b) The manufacture and distribution of single-use carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.
- (c) Single-use carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean.
- (d) Single-use carryout bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

This Council does, accordingly, find and declare that it should restrict the single use carry-out bags

5.502 Definitions

- A. "Customer" means any person obtaining goods from a retail establishment.

B. "Garment Bag" means a travel bag made of pliable, durable material with or without a handle, designed to hang straight or fold double and used to carry suits, dresses, coats, or the like without crushing or wrinkling the same.

C. "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than fifty percent of its revenues from the handling and sale of those donated goods or materials.

D. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.

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. "Public eating establishment" means a restaurant, take-out food establishment, or any other business that receives ninety percent or more of its revenue from the sale of prepared food to be eaten on or off its premises.

G. "Recycled paper bag" means a paper bag provided 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 post-consumer recycled content; is one hundred percent 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.

H. "Retail establishment" means any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items directly to the customer; and is located within or doing business within the geographical limits of the City of Pacifica. "Retail establishment" does not include public eating establishments or nonprofit charitable reusers.

I. "Reusable bag" means either a bag made of cloth or other machine washable fabric that has handles, or a durable plastic bag with handles that is at least 2.25 mil thick and is specifically designed and manufactured for multiple reuse. A garment bag may meet the above criteria regardless of whether it has handles or not.

J. "Single-use carry-out bag" means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure, including departments within a store, for the purpose of transporting food or merchandise out of the establishment. "Single-use carry-out bags" do not include bags without handles provided to the customer: (1) to transport prepared food, produce, bulk food or meat from a 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

5.503 Implementation Date

This Chapter shall not be implemented until April 22, 2013.

5.504 Single-use carry-out bag

A. No retail establishment shall provide a single-use carry-out bag to a 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 except as provided in this section.

B. On or before December 31, 2014 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of ten cents.

C. On or after January 1, 2015 a retail establishment may only make recycled paper bags or reusable bags available to customers if the retailer charges a minimum of twenty-five cents.

D. Notwithstanding this section, no retail establishment may make available for sale a recycled paper bag or a reusable bag unless the amount of the sale of such bag is separately itemized on the sale receipt.

E. A retail establishment may provide one or more recycled paper bags at no cost to any of the following individuals: a customer participating in the California Special Supplement 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 Health and Safety Code; 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; and a customer participating in CalFresh pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the California Welfare and Institutions Code.

5.504 Recordkeeping and Inspection

Every retail establishment shall keep complete and accurate record or documents of the purchase and sale of any recycled paper bag or reusable bag by the retail establishment, for a minimum period of three years from the date of purchase and sale, which record shall be available for inspection at no cost to the County during regular business hours by any County employee authorized to enforce this part. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the retail establishment address. The provision of false information including incomplete records or documents to the County shall be a violation of this Chapter.

5.505 Administrative fine

(a) Grounds for Fine. A fine may be imposed upon findings made by the Director of the Environmental Health Division, or his or her designee, that any retail establishment has provided a single-use carry-out bag to a customer in violation of this Chapter.

(b) Amount of Fine. Upon findings made under subsection (a), the retail establishment shall be subject to an administrative fine as follows:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
- (3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations;
- (4) Each day that a retail establishment has provided single-use carry-out bags to a customer constitutes a separate violation.

(c) Fine Procedures. Notice of the fine shall be served on the retail establishment. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. The grounds for the contest shall be that the retail establishment did not provide a single-use carry-out bag to any customer. Said hearing must be requested within ten days of the date appearing

on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that the above listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the fine shall be referred to a collection agency.

5.506 Severability

If any provision of this Chapter or the application of such provision to any person or in any circumstances shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

5.507 Enforcement

a) The Environmental Health Division of San Mateo County is hereby authorized and directed to enforce the provisions of this Chapter within the geographical limits of the City of Pacifica.

b) The authorization granted by subsection (a) of this section, includes, without limitation, the authority to hold hearings and issue administrative fines for violations of this Chapter within the geographical limits of the City of Pacifica.

c) Enforcement will begin effective, April 22, 2013.

SECTION 2. SEVERABILITY. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the City Council that such invalid provision be severed from the remaining provisions of the ordinance.

SECTION 3. CEQA REVIEW. On October 23, 2012, the County of San Mateo County adopted a Program Environmental Impact Report ("EIR") that analyzed the impacts of this reusable bag ordinance if adopted in cities throughout the County of San Mateo as well as neighboring jurisdictions. The EIR was adopted pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA") and the CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.* It is incorporated by reference herein.

Pursuant to Section 15096 of the CEQA Guidelines, the City of Pacifica acts as a responsible agency for adoption of this ordinance within the City of Pacifica. Upon independent review of the EIR and all the evidence before it, the City Council makes the following findings:

- 1) The Final Program Environmental Impact Report ("Final Program EIR") is complete, correct, adequate, and prepared in accordance with CEQA, 14 California Code of Regulations section 15000 *et seq.* ("CEQA Guidelines"), and the public comment period; and
- 2) On the basis of the Initial Study, Notice of Preparation, Final Program EIR, and public comment received by both the County of San Mateo and the City of Pacifica, there is no substantial evidence that the project as proposed will have a significant effect on the environment; and
- 3) Adoption of this ordinance and analysis of the EIR reflects the independent judgment of the City Council of the City of Pacifica; and
- 4) None of the conditions listed in CEQA Guidelines section 15162(a) are applicable to adoption of this Ordinance, and adoption of this Ordinance is an activity that is part of the program examined by the County's Final Program EIR and is within the scope of the project described in the County's Final Program EIR.
- 5) A Notice of Determination shall be filed pursuant to CEQA Guidelines sections 15094 and 15096.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from the passage date thereof.

SECTION 5. This ordinance shall be published once in the Pacifica Tribune, a newspaper of general circulation within the City of Pacifica, within fifteen (15) days of its adoption and shall be effective _____

The foregoing ordinance was introduced at a regular meeting of November 26, 2012 and passed and adopted at a regular meeting of the City Council of the City of Pacifica held on December 10, 2012 by the following vote:

- AYES, Councilmembers:
- NOES, Councilmembers:
- ABSENT, Councilmembers:
- ABSTAIN, Councilmembers:

Pete DeJarnatt, Mayor

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michelle Kenyon, City Attorney

* * * * *

(ID # 1133) at 12/10/2012 7:00 PM City Council Regular Meeting

CITY OF PACIFICA

By: _____

Pete DeJarnatt, Mayor

APPROVED AS TO FORM

By: _____

Michelle Kenyon, City Attorney

ATTEST

By: _____

Kathy O'Connell, City Clerk