

ORDINANCE NO. 1271A

EXHIBIT A

**CHAPTER 5.12
USE OF SINGLE-USE CARRYOUT PLASTIC BAGS**

SECTIONS: 5.12

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5.12.010 Findings and Purpose

- A. The City Council of the City of Palm Desert 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 Palm Desert.
- 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 Palm Desert recognizes that plastic bags are a public nuisance and affect public health and impact tourism and quality of life to both residents and visitors in Palm Desert.

5.12.020 Definitions

- A. "Customer" means any Person obtaining goods from a Store.
- B. "Food Bank" means is a non-profit, charitable organization that distributes food to those who have difficulty purchasing enough food to avoid hunger.

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- 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 (50%) of its revenues from the handling and sale of those donated goods or materials.
- D. "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.
- E. "Paper Bag Cost Pass-Through" means the cost which must be collected by retailers from their customers when providing a Recycled Reusable Paper Bag.
- F. "Person" means any natural person, firm, corporation, partnership, or other organization or group however organized.
- G. "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.
- H. "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.
- I. "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.
- J. "Public Eating Establishments" means a restaurant, take-out food establishment, or any other business that receives ninety percent (90%) or more of its revenue from the sale of Prepared Food to be eaten on or off its premises.
- K. "Recycled Reusable 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 (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~~

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~~Material (ASTM) Standard Specification for Compostable Plastics D6400, as published in September 2004.~~

- L. "Reusable Bag" means either a bag made of cloth or other machine washable fabric that has a handle, 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 reusable bag must 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.
- M. "Single-Use Carryout Plastic Bag" means a bag other than a Reusable 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. 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-Reusable~~ Paper Bag.
- N. "Store" means any of the following retail establishments located within the City limits of the City of Palm Desert.
- (1) A full-line, self-service 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

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(commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).

- (5) Store does not include Public Eating Establishments or Nonprofit Charitable Reusers.

5.12.030 Single-Use Carryout Plastic Bags Prohibited

- A. No Store shall provide to any customer a Single-Use Carryout Plastic Bag.
- B. This prohibition applies to bags provided for the purpose of carrying away goods and does not apply to produce bags or product bags.

5.12.040 Permitted Bags

All Stores shall only provide, or make available to, a customer Reusable Bag or a ~~Recycled Rusable~~ Reusable Paper Bag 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.

5.12.050 Carryout Bag Regulations

- A. No Store, to include grocery store or pharmacy, shall provide a Single-Use Carryout Plastic 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. 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.
- C. 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 take-out foods and liquids intended for consumption away from the food provider's premises.
- D. A Store shall make ~~Recycled-Reusable~~ Reusable 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.
- E. All Stores must keep records of the total number of ~~Recycled-Reusable~~ Reusable Paper Bags provided; the total amount of monies collected for providing ~~Recycled Reusable~~ Reusable 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

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records must be made available for the City Manager or his/her designee, to review at any time. These records may be kept at the retailer's corporate office.

5.12.060 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~~ Reusable Paper Bags or Reusable Bags at no cost.

5.12.070 Operative Date

This Chapter shall become operative six (6) months after its effective date for Stores defined in Subsections N(1) and N(2) of the Definitions Section. This Chapter shall become operative twelve (12) months after its effective date for Stores defined in Subsections N(3) and N(4) of the Definitions Section.

5.12.080 Penalties and Enforcement

- A. The City Manager, or his/her designee, has primary responsibility for enforcement of this Chapter. The City Manager, or his/her designee, is authorized to promulgate regulations and take any and all other actions reasonable and necessary to enforce this Chapter.
- B. If the City Manager, or his/her designee, determines that a violation of this Chapter has occurred, he/she will issue a written warning notice to the operator of a Store that a violation has occurred and the potential penalties that will apply for future violations.
- C. Any Store that violates or fails to comply with any of the requirements of this Chapter after a written warning notice has been issued for that violation shall be guilty of an infraction.
- D. All administrative civil fines shall be established and set forth by resolution of the City Council. Established fines may be modified as appropriate by City resolution.
- E. Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

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5.12.090 Severability

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

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.