

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

An Ordinance of the City of Pittsburg )  
Adding Chapter 8.07 "Plastic Bag )  
Regulation" to the Municipal Code )

ORDINANCE NO. 13-1377

The City Council of the City of Pittsburg DOES ORDAIN as follows:

SECTION 1. RECITALS

Globally, an estimated 500 billion to one trillion petroleum-based plastic bags are used each year resulting in the use of over 12 million barrels of oil. California's Department of Resources Recycling and Recovery (CalRecycle) estimates that Californians use nearly 20 billion single-use plastic bags per year and discard over 100 hundred plastic bags per second. Further, the Environmental Protection Agency estimates that only five percent of the plastic bags in California and nationwide are currently recycled.

According to a 2011 CalRecycle report on plastic bag and film recycling collected in California stores, single-use plastic bags were recycled at a three percent rate in 2009. Despite establishing a statewide infrastructure for plastic bag recycling, recycling efforts have failed. Furthermore, the majority of comingled plastics collected for recycling was film and shrink wrap, at 63.2 percent. Only 5.9 percent of the mixed plastics collected was actually single-use plastic bags.

Recent studies indicate that single-use plastic bags contain many different additives such as polychlorinated biphenyls (PCBs), dichlorodiphenyl/dichloroethylene (DDE) and other toxic substances. Plastics have been found to concentrate these toxic chemicals at levels of up to one million times the levels found in seawater.

Most single-use plastic bags do not biodegrade, but instead persist in the environment for hundreds of years. Rather than breaking down, they slowly break up through abrasion, tearing, and photo-degradation into toxic plastic bits that contaminate soil and water, entering the food web where marine and domestic animals inadvertently ingest them endangering their health.

The Delta is connected to the world's oceans through its stormwater system and wind streams, and plastic bag litter from the City contributes to the problem of causing harm to marine and domestic animal life as well as to recreational activities within these bodies of water.

The City's federally mandated National Pollutant Discharge Elimination System (NPDES) permit, is overseen by the California Regional Water Quality Control Board, San Francisco Bay Region, and identifies a zero total maximum daily allowance for trash. The "Long-term Trash Load Reduction" permit condition requires cities to develop a plan with items such as 'trash reduction ordinances' in order to demonstrate a 70 percent trash load reduction by 2017 and 100 percent compliance by 2022.

The City of Pittsburg is located along the Delta and contains creeks and other waterways as well as a marina, has a regional highway running through it (State Highway 4) and borders an active landfill along a portion of the city boundary. In addition to normal littering and water quality concerns, these circumstances make plastic bag litter a particular concern for the City.

Reusable bags are readily available from numerous sources and vendors. Many grocery and other retail establishments throughout the City of Pittsburg already offer reusable bags. The City has been distributing reusable bags at multiple venues over many years.

## SECTION 2. California Environmental Quality Act.

On October 21, 2013, the City Council passed Resolution No. 13-12040 adopting a Negative Declaration for the Plastic Bag Regulation Ordinance.

## SECTION 3. The City Council finds and determines that:

The recitals set forth above are true and correct statements.

The recitals above and these findings are based on the entire record, including the Negative Declaration, the September 16, 2013 City Council staff report, testimony received at the September 16, 2013 City Council public hearing and other information in the City project file.

The use of single-use plastic carryout bags by consumers at retail establishments is detrimental to the environment, public health and welfare.

The manufacture and distribution of single-use plastic and paper carryout bags requires utilization of natural resources and results in the generation of greenhouse gas emissions.

Single-use plastic carryout bags contribute to environmental problems, including litter in storm drains, creeks, the bay and the ocean.

Single-use carryout plastic bags provided by retail establishments impose unseen costs on consumers, local governments, the state and taxpayers and constitute a public nuisance.

The City of Pittsburg has an obligation to protect the environment, the economy, and public health.

## SECTION 4. Adding Chapter 8.07 "Plastic Bag Regulation" to Title 8 "Health and Sanitation" of the Pittsburg Municipal Code

Title 8 "Health and Sanitation" of the Pittsburg Municipal Code is hereby amended to add Chapter 8.07 "Plastic Bag Regulation" which shall hereby read as follows:

### Article I. General Provisions

Sections:

- 8.07.010 Purpose and findings.
- 8.07.020 Definitions.
- 8.07.030 Plastic Carryout Bags Prohibited.
- 8.07.040 Permitted Bags.
- 8.07.050 Regulation of Recycled Paper Carryout Bags.
- 8.07.060 Use of reusable bags.
- 8.07.070 Exempt Customers.
- 8.07.080 Enforcement and violation-penalty.

**8.07.010 Purpose and Findings.**

An ordinance of the City of Pittsburg relating to regulating the use of plastic carryout bags and recyclable paper carryout bags and promoting the use of reusable bags within the City.

**8.07.020 Definitions.**

The following definitions apply to this ordinance:

"Carryout 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. Carryout Bags do not include bags without handles provided to the Customer to transport produce, bulk food or meat from a produce, bulk food or meat department with in a store to the point of sale.

"City Facility" means a park, building or other facility located on City property or operated by the City.

"Customer" means any person purchasing goods from a Retail Establishment.

"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.

"Operator" means the person in control of, or having the responsibility for, the operation of a Retail Establishment, which may include, but is not limited to, the owner of the Retail Establishment.

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

"Plastic Bag" means any bag made predominantly of plastic derived from either petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a Customer at the point of sale. Plastic bags includes: compostable and biodegradable bags but does not include Reusable Bags, Produce Bags, or Product Bags.

"Postconsumer Recycled Material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle.

"Postconsumer Recycled Material" does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

"Prepared Food" means foods or beverages which are prepared on 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.

"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 Retail Establishment or to prevent such food items from coming into direct contact with other purchased items.

"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 to be eaten on or off its premises.

"Recyclable" means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

"Recycled Paper Carryout Bag" means a paper bag that meets all of the following requirements: (1) contains no old growth fiber, (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) Postconsumer Recycled Material; (3) is accepted for recycling in curbside programs in the City of Pittsburg; (4) displays the word "Recyclable" in a highly visible manner on the outside of the bag; and (5) and displays the percentage of Postconsumer Recycled Material used.

"Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and meets all of the following requirements: has a minimum lifetime of 125 uses, which for purposes of this subsection, means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; is machine washable or capable of being cleaned and disinfected; 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; and if made of plastic, is a minimum of at least 2.25 mils thick.

"Retail Establishment" means any commercial establishment that sells perishable and 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 city/county limits of the City of Pittsburg. Retail Establishments does not include Public Eating Establishments or Nonprofit Charitable organizations.

"Single-Use Carryout 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 Plastic Carryout Bags and Recycled Paper Bags however:

(1) Do not include bags that are integral to the packaging of the product.

(2) Do not include bags without handles provided to the customer to transport produce, bulk food or meat from produce, bulk food or meat department within a store to the point of sale.

(3) Do not include bags without handles provided to the customer to hold prescription medication dispensed from a pharmacy.

(4) Do not include bags without handles provided to the customer to protect a purchased item from damage or contaminating other purchased items at check-out (examples include small paper bag for greeting cards, paper bags to protect bottles, plastic bags around ice cream or other wet items, paper bags used to weigh candy, etc.).

**8.07.030 Plastic Carryout Bags Prohibited.**

No Retail Establishment shall provide a Single-Use Carryout 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 provide in this Ordinance.

This prohibition applies to bags provided for the purpose of carrying away goods from the point of sale and does not apply to Produce Bags or Product Bags.

**8.07.040 Permitted Bags.**

All Retail Establishments shall provide or make available to a Customer only Recycled Paper Carryout Bags or Reusable Bags for the purpose of carrying away goods or other materials from the point of sale, subject to the terms of this ordinance. Nothing in this ordinance prohibits Customers from using bags of any type that they bring to the Retail Establishment themselves or from carrying away goods that are not placed in a bag, in lieu of using bags provided by the store.

**8.07.050 Regulation of Recycled Paper Carryout Bags.**

Any Retail Establishment that provides a Recycled Paper Carryout Bag or Reusable Bag to a Customer must charge the Customer a minimum charge of 10 cents (\$0.10) for each bag provided, except as otherwise provided in the ordinance.

One year after the ordinance is effective a Retail Establishment may make available for sale to a Customer a Recycled Paper Carryout Bag for a minimum charge of fifteen cents (\$0.15)

Two years after the ordinance is effective a Retail Establishment may make available for sale to a Customer a Recycled Paper Carryout Bag for a minimum charge of twenty-five cents (\$0.25).

All Retail Establishments must indicate on the Customer receipt the number of Recycled Paper Carryout Bags provided and the total amount charged for the bags.

All monies collected by a Retail Establishment under this ordinance will be retained by the Retail Establishment and may be used for any of the following purposes:

costs associated with complying with the requirements of this ordinance, actual costs of providing Recycled Paper Carryout Bags, or costs associated with a Retail Establishment's educational materials or education campaign encouraging the use of Reusable Bags, if any. fund Reusable Bags giving-aways during limited-time store promotions.

Retail Establishments are encouraged to provide a minimum credit of five cents (\$0.05) for each Reusable Bag brought to the Retail Establishment by Customers who bring Reusable Bags to the Retail Establishment for use.

All Retail Establishments must report to the City Manager, on an annual basis, the total number of Recycled Paper Carryout Bags provided, the total amount of monies collected for providing Recycled Paper Carryout Bags, and a summary of any efforts a Retail Establishment has undertaken to promote the use of reusable bags by Customers in the prior year. Such reporting must be done on a form prescribed by the City Manager, and must be signed by a responsible agent or officer of the Retail Establishment confirming that the information provided on the form is accurate and complete. All reporting must be submitted no later than 45 days after the end of each calendar year.

If the reporting required is not timely submitted by a Retail Establishment, such Retail Establishment shall be subject to the fines set forth in Section 8.07.080 below.

**8.07.060 Use of reusable bags.**

All Retail Establishments must provide Reusable Bags to Customers, either:

for sale; or

at no charge during limited-time store promotions.

Each Retail Establishment is strongly encouraged to educate its staff to promote Reusable Bags and to post signs encouraging Customers to use Reusable Bags as well as reusable produce bags.

**8.07.070 Exempt Customers.**

A Retail Establishment must provide at the point of sale, free of charge, either reusable bags or Recycled Paper Carryout Bags or both, at the Retail Establishment's option, to any Customer participating either 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 Health and Safety Code or in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code, the State Department of Social Services Food Stamp program, other government-subsidized purchase programs for low-income residents.

**8.07.080 Enforcement and violation-penalty.**

Violation of this Ordinance is hereby declared a Public Nuisance; this Ordinance shall be enforced in accordance with Municipal Code Section 1.20.030, except as modified below.

The City Manager and Code Enforcement Officer have primary responsibility for enforcement of this ordinance. The City Manager's Office is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this ordinance, including, but not limited to, investigating violations, issuing citations, assessing fines and entering the premises of any Retail Establishment during business hours. Other City staff may assist with this enforcement responsibility by entering the premises of a Retail Establishment as part of their regular inspection functions and reporting any alleged violations to the City Manager.

If the City Manager or Code Enforcement Officer determines that a violation of this ordinance has occurred, he/she shall issue a written citation to the Operator of a Retail Establishment that a violation has occurred and the potential penalties that will apply for future violations.

Any Retail Establishment that violates or fails to comply with any of the requirements of this ordinance after a written citation has been issued for that violation shall be guilty of an infraction.

If a Retail Establishment has subsequent violations of the ordinance that are similar in kind to the violation addressed in a written citation, the following penalties shall be imposed and shall be payable by the Operator of the Retail Establishment to the City of Pittsburg:

A fine not exceeding one hundred dollars (\$100.00) for the first violation after the written citation is given;

A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same ordinance section within 12 months; or

A fine not exceeding five hundred dollars (\$500.00) for a third and any subsequent violations of the same ordinance section within 12 months.

A fine shall be imposed for each day a violation occurs or is allowed to continue.

All fines collected pursuant to the ordinance shall be deposited in the Police Support Services – Administrative Citations Account to assist Code Enforcement with its costs of implementing and enforcing the requirements of the ordinance.

Any Retail Establishment Operator who receives a written citation or is assessed a fine may request an administrative review of the accuracy of the determination or the propriety of any fine assessed, by filing a citation of appeal with the City Manager no later than 30 days after receipt of a written citation or fine, as applicable. The notice of appeal must include all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses that the appellant wishes to be considered in connection with the appeal, and an appeal fee in the amount set by resolution of the City Council. Failure to timely request a hearing or to pay the appeals processing fee constitutes a waiver of the right to appeal and a failure to exhaust administrative remedies. The appeal will be heard by a Hearing Officer designated by the Code Enforcement Officer.

The Hearing Officer shall conduct a hearing concerning the appeal within 45 days from the date that the notice of appeal is filed, or on a later date if agreed upon by the appellant and the City of Pittsburg, and shall give the appellant 10 business days prior citation of the date of the hearing. The Hearing Officer may sustain, rescind, or modify the written citation or fine, as applicable, by written decision. The written decision shall be served on the appellant. The Hearing Officer shall have the power to waive any portion of the fine in a manner consistent with the decision. The decision of the Hearing Officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

SECTION 5. Severability.

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 6. No Conflict with Federal or State Law.

Nothing in this ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 7. Effective Date.

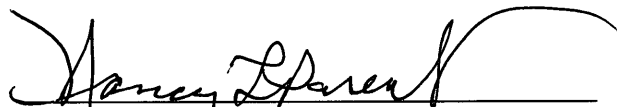
This ordinance shall be in full force and effective on January 15, 2014.

SECTION 8. Publication.

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and again 20 days after its adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Pittsburg held on September 16, 2013, and was adopted and ordered published at a meeting of the City Council held on October 21, 2013, by the following vote:

AYES: Casey, Evola, Johnson, Longmire, Parent  
NOES: None  
ABSTAINED: None  
ABSENT: None

  
Nancy L. Parent, Mayor

ATTEST:  
  
Alice E. Evenson, City Clerk