

**San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. _____**

**AN ORDINANCE ESTABLISHING A WASTE REDUCTION AND
REUSE PROGRAM FOR CARRYOUT BAGS**

The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

Section 1. General Provisions

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares all of the following:

- (a) The purpose of this Ordinance is to enable the IWMA, a joint powers agency established pursuant to Government Code Section 6500 and empowered by its member jurisdictions, to exercise the members' common powers to achieve the mandates imposed by the Integrated Waste Management Act of 1989 (AB 939) on a regional basis, to enact a waste reduction and reuse program that will decrease the use of single-use carryout bags.
- (b) The purpose of this ordinance is to reduce the millions of single-use carryout bags currently used in San Luis Obispo County each year.
- (c) The purpose of this Ordinance is to maintain and enhance natural resources by reducing the negative environmental impact of single-use carryout bags.
- (d) The purpose of this Ordinance is to protect the environment from the negative environmental impact of single-use carryout bags.
- (e) The purpose of this Ordinance is to allow stores to recover their reasonable cost of providing recyclable paper bags to customers.

(f) This Ordinance shall not be construed as requiring a store to: (1) collect, transport or recycle plastic carryout bags; (2) impose a plastic carryout bag fee; and (3) impose auditing or reporting requirements on stores.

Section 2. Definitions

For the purposes of this Ordinance, the following terms have the following meanings, unless the context clearly requires otherwise.

(a) "Customer" means any person obtaining goods from a store.

(b) "IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

(c) "Store" means a retail establishment within San Luis Obispo County that provides carryout bags to its customers as a result of the sale of a product and that meets any of the following requirement definitions:

(1) A "Supermarket" which means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items.

(2) "Large Store" means 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 Taxation Code).

(3) "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 and is licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(4) "Convenience Food Store" means any 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.

(d) "Single-Use Carryout Bag" means any bag made predominately of paper or plastic derived from either wood, petroleum or a biologically-based source, such as corn or other plant sources, which is provided to a customer at the point of sale, but does not include reusable bags or product bags.

(e) "Product Bag" means any bag without handles used exclusively to cradle and carry (1) produce, bulk food or meat 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.

(f) "Recyclable paper bag" means a paper single use carry-out bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) Contains no old growth fiber and contains a minimum of 40 percent postconsumer recycled materials except for an eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the IWMA Region.

(3) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard D6400.

(4) Has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of post-consumer content.

(g) "Reusable Bag" means a bag with handles that is specifically designed and manufactured to withstand repeated uses over a period of time and meets all of the following requirements: (1) is machine washable or is made from a material that can be cleaned or disinfected; (2) shall not contain lead, cadmium, or any other heavy metal in toxic amounts; and (3) if made of plastic or biologically based source, is a minimum of at least 2.25 mils thick.

Section 3. Store Responsibility

(a) On and after September 1, 2012, stores as defined in Section 2 (c) shall be prohibited from providing single-use carryout bags to customers at the point of sale, except a store may provide to customers recyclable paper bags upon request, but shall charge the customers after December 1, 2012 a reasonable cost for each bag, but not less than ten cents (\$0.10) per bag.

(b) Stores may reuse their cardboard boxes by providing them to their customers for the purpose of carrying away goods.

(c) Nothing in this Ordinance 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.

(d) Stores shall have reusable bags available for purchase by customers.

Section 4. Enforcement

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunction relief, filed in the Superior Court of the County of San Luis Obispo to compel and enforce the provisions herein against any retail establishment within San Luis Obispo County in violation of this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation of Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the districts within said County have adopted code enforcement Ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said Ordinances as land-use or code-enforcement violations consistent with said Ordinances.

Section 5. Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 6. Effect of Headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on November 9, 2011 and further reading was waived by a majority vote of those Directors present. This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage and before the expiration of 15 days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of San Luis Obispo.

On a motion by Director _____, second by Director _____, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Management Authority, on *Month, day, year*, by the following vote.

AYES: Directors,

NOES: Directors,

ABSENT: Directors,

James Patterson, President of the San Luis Obispo County
Integrated Waste Management Authority

ATTEST:

Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED
AS TO FORM AND CONTENT

RAYMOND A. BIERING
IWMA Counsel